

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re DAVID F., a Person Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICE AGENCY,

Plaintiff and Respondent,

v.

BRENDA F.,

Defendant and Appellant.

F071040

(Stanislaus Super. Ct. No. 516988)

OPINION

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

David M. Meyers and Mara L. Bernstein for Defendant and Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

Brenda F., an apparently loving grandmother, immediately sought and received placement of her newborn grandson, David F., after he had been detained from his parents. Without the court's involvement, Brenda lost that placement when the Stanislaus County Community Services Agency (Agency) determined she had allowed David's father to have unauthorized contact with him. At that point, Brenda's only recourse was to file a Welfare and Institutions Code section 388¹ petition, which she did four months after David's removal. By her petition, Brenda sought David's return to her care or, in the alternative, that David's relatives in Texas be assessed for placement. After a contested hearing, the juvenile court issued an order denying the petition.

On appeal from that order, Brenda contends the juvenile court erred in denying the request for placement with her because it failed to consider the relative placement preference of section 361.3 and the Agency failed to file a section 387 petition when it removed David from her care. She also contends the juvenile court erred in denying her request for assessment of the Texas relatives. While we appreciate Brenda's arguments and are concerned that the Agency's ability to remove David without preliminary court review may impede the legislative preference and public policy for relative placement, we are constrained by the current state of the law, which leaves us no choice but to affirm the juvenile court's order.

FACTUAL AND PROCEDURAL BACKGROUND

These dependency proceedings began in March 2014,² after David's mother, Sabrina, tested positive for methamphetamine on David's birth, and was not bonding with David. Sabrina had four other children ranging in age from four to 12. The three oldest children lived with their father in another county, while the youngest lived with his

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² All subsequent references to dates are to the year 2014, unless otherwise stated.

maternal grandmother, Rita C., in Texas.³ Sabrina was on probation for petty theft. David's father, John, had multiple active probation cases, and was released from jail about a week before David's birth after serving a six-month jail term. John and Sabrina did not have stable housing and offered no explanation for not visiting or feeding David. A social worker gave them the opportunity to arrange for suitable housing and to obtain layette items for David.

When the parents failed to obtain housing or baby items, the Agency took David into protective custody and filed a dependency petition on his behalf under section 300, subdivision (b) (failure to protect), based on Sabrina's prior child welfare history and her history of substance abuse, John's multiple arrests and active probation cases, the parents' failure to obtain housing and baby items, and the parents' failure to ask to see David or feed him, all of which placed David at a substantial risk of neglect. There were no allegations of physical abuse.

The Detention, Jurisdiction and Disposition Hearings

On March 10, the juvenile court ordered David detained in a suitable placement, gave the Agency responsibility for David's placement and care, and set the jurisdictional hearing. A guardian ad litem was appointed for Sabrina at her attorney's request. David was placed in a foster home. That same day, Brenda requested a placement application; she completed a Live Scan on March 12, as did David's paternal great-grandmother, Darlene H.

On April 15, the Agency's placement specialist searched for and identified maternal and paternal relatives. Relative placement letters were mailed to four maternal

³ Rita had been caring for Jonathan since he was five months old. Sabrina's father, Harry C., who also lived in Texas, told the social worker that Sabrina and David could live with him, and there were several other family members who could help, one of whom lived in Napa. Harry stated he would have her call. Rita and Harry did not have legal guardianship of Jonathan, but said they could get it if needed.

and two paternal relatives: maternal aunts Laura and Delila C.; maternal relatives Frank and Nicolas C.; paternal relative Brian F.; and paternal grandmother Brenda. The Agency placed David with Brenda on April 17, after Brenda turned in her final placement paperwork and the Agency completed a home evaluation.

A combined jurisdictional and dispositional hearing was held on April 30. The Agency recommended the juvenile court sustain the petition, remove David from parental custody, and order reunification services. The concurrent plan, should reunification efforts fail, was a permanent plan of adoption by Brenda, who was willing to adopt. John appeared at the hearing, but Sabrina did not. At the time of the hearing, John was incarcerated for receiving stolen property; his formal release date was in October 2014, although he expected to be released sooner.

At the conclusion of the hearing, the juvenile court sustained the petition without modification and adjudged David a dependent child. The court found the Agency made reasonable efforts to prevent removal, there were no reasonable means to protect David without removing him from John and Sabrina's custody, the Agency made diligent efforts to locate, notify and identify David's family members, and David's "placement is necessary and appropriate." The court ordered that (1) David be removed from parental custody, (2) David be placed in a suitable placement under the Agency's supervision with the Agency having responsibility for his placement and care, (3) that John and Sabrina be provided reunification services, and (4) the parents receive supervised visitation, which for John was to occur twice a month if he was incarcerated, and once a week when not incarcerated. The court set a progress review hearing for July 21 and a six-month review hearing for October 22.⁴

⁴ John appealed from the orders made at the dispositional hearing; he challenged only the removal order and the finding that the Agency made reasonable efforts to prevent removal. We affirmed the orders in an unpublished opinion, *In re David F.* (Jan. 16, 2015, F069641).

The Progress Review Hearing

At the July 21 progress review hearing, the Agency submitted a progress update. The Agency reported that it had removed David from Brenda's care on July 3 because she was not protecting him, and placed him in a foster home. John had been released from jail on June 8 and came to Brenda's home in Riverbank. On July 2, Brenda told the social worker that John had come to her home, and that she fed John and gave him money. Brenda told the social worker, "[T]his is my son, what am I suppose[d] to do[?]" Until father's release in June, he had once weekly visits with David at the jail, but he had not requested visits since his release.

Neither parent was present at the progress review hearing, although "grandparents" were present. Mother's attorney stated he was disappointed that placement with Brenda did not work out, and he would like it if the Agency could work with her on a resolution. In the meantime, he had been in contact with several relatives from Texas who were interested in placement, who he believed had already contacted the Agency and begun the proper procedures. The juvenile court found that the parents' progress was extremely poor, and ordered the Agency to ask John whether he had made any contact with the service providers.

The Agency's Section 388 Petition

On August 15, the Agency filed a section 388 petition requesting the juvenile court to authorize it to initiate the "ICPC"⁵ process with Texas and give it discretion to place David with a relative in Texas, who wanted placement of David and was currently caring for David's sibling. At the September 11 hearing on the petition, the juvenile court granted it.

⁵ "ICPC" stands for the Interstate Compact on the Placement of Children (Fam. Code, § 7900 et seq.).

The Status Review Report

In a report prepared for the October 22 status review hearing, the Agency recommended termination of reunification services and that a section 366.26 hearing be set to consider a permanent plan of adoption for David. The parents were not participating in services, had not consistently visited David, and failed to keep in contact with the Agency. While the parents attempted to schedule appointments to begin their case plans, they failed to attend the appointments or to complete their case plan components. Brenda had visited David once a month since his removal; the visits went well and Brenda was attentive to David, who was happy throughout each visit.

David had been in the foster home of Mr. C. and Mr. H. since July 3. David had adjusted well to his placement, had bonded with his caregivers, and appeared happy and healthy. The social worker, Pamela Werb, explained that she filed the section 388 petition because David's maternal uncle in Texas, who with his wife was raising Sabrina's four-year-old son, had contacted her and asked that David be placed in his home. The maternal uncle said they had guardianship over David's sibling, but it was completed in a front of a notary, not the court. According to the wife, they planned to return the son to Sabrina when she "got better." Although Werb was concerned about protective capacity of these relatives, she was willing to initiate the ICPC process because it was in David's best interest to be placed with a relative and sibling. The social worker planned to determine whether it was in David's best interest to place him with these relatives when she received the outcome of the ICPC.

John did not appear at the October 22 six-month review hearing, although Sabrina was present. At her attorney's request, the matter was set for a contested hearing on November 21.

Brenda's Section 388 Petition

On November 13, Brenda filed a section 388 petition in which she stated that on an unknown date the judge had ordered David placed in a foster home, and that she

wanted the judge to order David placed back with her. As to changed circumstances and best interests, Brenda asked the judge to refer to her accompanying declaration and points and authorities.

In her declaration, Brenda stated that before David's birth, Brenda agreed to take guardianship of David at Sabrina's request, but the social workers would not listen to her when she tried to tell them of this arrangement at the hospital after David's birth. Brenda considered allowing John and Sabrina to stay at her house, but she was not comfortable having them live with her due to their addictions, and because her mother, Darlene, lived with her and Brenda was working full time. Brenda, however, told the Agency she was available for placement of David.

Thereafter, Brenda applied for placement of David. The Agency approved her home as an appropriate relative placement and David was placed in her care in April. Brenda took 12 weeks of leave from her job so she could be home with David. Brenda did not recall anyone providing her with any rules, regulations or restrictions regarding her care of David when he was placed with her, and claimed she was only asked if she was willing to adopt David if his parents did not reunify with him, which she was.

Four days after John's release from jail on June 8, he contacted Darlene "looking to earn money." Darlene put him to work in the yard mowing, pruning and painting. Brenda claimed she did not allow John to come into the house and he only saw David through the front door. Brenda told John to contact his lawyer and social worker so he could work toward getting David back. John's attorney later contacted Brenda to set up an appointment with John; Brenda scheduled an appointment and provided John with a ride there. Brenda brought David with them because she wanted to "show him off to the attorney[.]" but Brenda did not have an opportunity to speak with the attorney.

While David was with her, Brenda maintained good contact with social worker Werb; she always answered Werb's calls and provided her with whatever information she requested. In June, Brenda took her friend to the Agency to be fingerprinted because the

friend was going to stay with her. While there, Brenda told Werb that she saw John; Werb responded that “John could not be around David, otherwise the baby could be taken.” According to Brenda, Werb did not explain the rationale behind the rule or provide any other information.

Since his release from jail, John had been living in Riverbank. Because Brenda did not want John around her home, she rented a hotel room for him in Modesto. She gave John a ride to Modesto when he needed transportation, but left David with Darlene when doing so. Brenda also provided John with food on one occasion “through a closed door.” Brenda spoke with Werb about this, who said that David could be taken from her home.

When the social worker removed David from her home on July 3, the social worker told Brenda not to give John money or food so he would not come around the house. The social worker said she was removing David because John was around and she was worried John would drop David. Brenda explained that she never allowed John to be near David or to be inside the house, and never would have left them alone. The social worker responded John could not even be on the sidewalk.

Brenda did not try to seek David’s return earlier because she had difficulty finding an attorney who was willing to take her case and she hoped David would be placed with the Texas relatives. Brenda had been speaking with the guardian of David’s four-year-old brother, Tiffany C., since early September, and Brenda believed the social worker was working toward this placement. When Brenda realized this placement was not being pursued, she began “fighting” to have David returned to her, as she knew he should be with family.

The day after David’s removal, David’s foster parent, Mr. C., called her and set up a visit for the following week. Mr. C. allowed Brenda to visit every other Monday and Brenda had not missed a visit. On November 3, the social worker told Brenda her visits had been reduced to once per month. Brenda claimed she now had a better understanding

of why John could not be near David or her home, as she had discussed her circumstances with her attorney and her friends, who explained addiction, and its risks and consequences, in a way the social worker never had. Brenda stated that if John were to come around her home unannounced, she would ask him to leave and call the police if he was intoxicated or defiant. Brenda claimed she was confused about the social worker's expectations, but now that they were made clear, she would follow any of the court's or social worker's rules. Brenda also claimed she had distanced herself from Sabrina.

In her points and authorities in support of the petition, Brenda asserted she was seeking an order returning David to her care or, alternatively, an expedited evaluation of David's family in Texas. Brenda argued that the removal from her was improper and an abuse of discretion because the social worker did not explain the rules or restrictions when David was first placed with her, or provide her with any paperwork, and the Agency's expectations were made clear only after David's removal. Brenda asserted she now understood what was expected of her and therefore David would be safe in her home. Brenda also argued the Agency failed to provide relatives with preferential consideration after David was removed from her care, and all the criteria had been met to order an expedited ICPC of the Texas relatives. Brenda asserted that even through there was a general placement order, the Agency should have filed a section 387 petition when it moved David to a more restrictive level of care, as the petition would have provided her with notice and an opportunity to be heard, and efforts could have been made to prevent the need for removal. Brenda argued it was in David's best interest to be returned to her home because the law favors placement with relatives to maintain biological ties.

On November 21, the juvenile court set a contested six-month review hearing for December 9. On November 25, the juvenile court signed an order setting a hearing on the section 388 petition for December 9, to coincide with the review hearing.

The Agency's Opposition to Brenda's Section 388 Petition

The Agency filed written opposition to the section 388 petition on December 8. The Agency explained the circumstances that led to David's removal. On June 9, Brenda told Werb that John was released from jail the day before, but she did not know where he was. The next day, Brenda told Werb that John came to her home, but she did not know John's or Sabrina's whereabouts. Werb told Brenda that neither John nor Sabrina were to be at her home.

On June 27, when Brenda and her neighbor came to the Agency and reported that John was at a hotel, and that Brenda had paid for his room, Werb told them that John was not allowed at Brenda's home. Werb explained how important it was for parents to obtain help, the meaning of enabling, and the harm enabling could do to John. Brenda repeatedly stated that it was her son and she needed to help him. Werb told Brenda to contact her if she had contact with John again.

On July 2, Werb called Brenda to advise her that, according to the hotel manager, John and Sabrina were no longer there. Brenda responded that "they are not there anymore." Werb asked Brenda if she knew where they were. Brenda stated she did not know where Sabrina was, but John was in Riverbank. When Werb asked if John was in her home, Brenda stated "her son is around and has come over." Werb again told Brenda that John was not allowed at her home. Brenda answered, "[W]hat am I suppose[d] to do, that is my son." Werb explained that John needed help, and unless she stopped enabling him, he might not get help. Brenda said she could not do that, and that she gave John money and food. Werb asked Brenda where John sleeps; Brenda replied, "[O]h here and there somewhere in Riverbank."

On July 3, Werb consulted with her supervisor, Patricia Tout, and manager regarding removing David from Brenda and making a placement change; Werb also spoke with David's attorney. They all agreed that David should be removed from Brenda, as Brenda was not being protective despite being told the parents could not be at

her home. Werb and another social worker went to Brenda's home; Werb asked Brenda if she continued to give John food and money. Brenda said she makes him soup and gives him money, and asked what she was supposed to do as it was her son, but she claimed he did not come into the home.⁶ Werb told Brenda they were there to remove David and explained that Brenda was not being protective by having John at the home. Brenda did not argue, but continued to state that it was her son.

Within an hour of David's removal, Brenda brought Sabrina to the Agency, although Brenda told Werb earlier that day that she did not know where Sabrina was and did not have anything to do with her. Sabrina appeared under the influence and could not provide a urine sample for a drug test. Sabrina said she wanted to put David up for adoption and wanted Brenda to adopt him.

The Agency explained the status of the Texas placement. Toward the end of July, two families from Texas expressed an interest in placement – maternal uncle, Frank C., and his wife, Annette, and maternal uncle, Sammy C. and his wife, Tiffany. Werb mailed placement interest packets to both couples. Werb re-mailed the packet to Sammy and Tiffany on August 13, after Tiffany called to ask about the status of the ICPC and told Werb they had not received the packet. Werb had not received interest packets from either family when the juvenile court granted the Agency's section 388 petition to begin the ICPC process; Werb submitted the petition because she felt confident the packets would be returned.

Another relative from Texas, maternal aunt Laura C., also expressed an interest in placement in October. Laura drove from Texas to attend the October 22 court hearing.

⁶ It appears that the social worker was concerned about Brenda enabling John. It is unknown whether the ultimate removal of the child from Brenda's home would have occurred if the parameters related to permissible contact with John were clearly understood (even if conditioned upon there being no contact with David). It is noteworthy that supervised visitation by John and Sabrina was permitted.

After court, Laura and Sabrina came to the Agency and spoke with supervisor Patricia Tout. Laura told Tout that she came from Texas to get David because she did not want him to be adopted. Tout gave Laura an interest packet for placement.

Werb tried to call Frank and Sammy because they had not returned their interest packets, but could not reach them or leave a message on their voicemails because their voicemails stated they were not able to take calls. Werb called the maternal grandparents, but their phone was disconnected. Werb called Laura to tell her she was trying to reach Sammy and Tiffany. Laura offered to contact Sammy; Laura called Werb back later and said that Sammy was no longer interested in placement because he was going through too much in his own life. Laura told Werb that Frank was homeless, had just moved in his mother, and was unable to care for a baby. Werb advised Laura to make an appointment for live scan fingerprinting.

Werb had not heard from Sammy and Tiffany since August 13, or from Frank and Annette since July 22. Werb also had not heard from Laura since her visit to the Agency on October 22. Werb did not continue with the ICPC as the Texas family members had not contacted her to advise they were still interested in placement or returned any of the paperwork.

The Agency opposed placing David with Brenda, as Brenda had shown she could not be protective of him. The Agency pointed out that Brenda admitted she allowed John to be around her home, and even transported him to his attorney's office with David along, in violation of the Agency's directive not to allow John to be around David. Brenda's statements clearly indicated that she intended to continue to have close contact with, and to assist, John, despite the Agency's warnings, and that she could not turn John away if he came to her for help. Brenda's behavior demonstrated that she would allow John to see David, and because John had not sought help for his addiction, he would likely be under the influence during those contacts. It was also apparent to the Agency that Brenda had not been honest about her knowledge of Sabrina's whereabouts. The

Agency asserted these incidents presented a serious risk of harm or detriment to the safety of this very young child.

The Agency also opposed placement with the Texas family members, as none of them had contacted Werb after their initial contacts or expressed further interest in placement. The Agency argued it was in David's best interest to remain in his current placement, as it was a safe, loving environment, and the foster parents were dedicated to keeping David safe. In contrast, the Agency was not certain that David's family members could or would keep him safe.

The Six-Month Review Hearing

At the December 9 hearing, the juvenile court stated that it had read and considered the status review report filed on October 10, the section 388 petition and all the attachments, including the points and authorities, and the opposition. Brenda's attorney requested a continuance of the section 388 hearing because she had just received the Agency's opposition, as well as information that the Texas relatives were still interested in placement which she wanted to explore. Father's attorney joined in the request. The juvenile court understood the request to continue the section 388 hearing, but saw no reason to continue the six-month review hearing. County counsel argued that the review hearing should go forward. Brenda's attorney asked that the two hearings stay together to "keep the caretaker preference in place." Sabrina's attorney agreed, asserted the Agency filed its opposition late in bad faith, and argued that both hearings should be continued because if the Agency proceeds with the review hearing, there would no longer be a relative placement preference. John's attorney concurred with Sabrina's attorney's remarks.

The juvenile court noted the six-month review hearing had been pending since it was originally set for October 22, and that Brenda filed her section 388 petition "pretty late in the game." The juvenile court explained that although the petition was filed on November 13, it did not act on it until November 25 because it was "swamped" after

returning from vacation, and since the clerk's office did not send out notice of the hearing until December 4, the Agency did not have a significant amount of time to file their opposition. Although Brenda's attorney had provided the Agency with a copy of the section 388 petition after the November 21 hearing, the Agency did not know at that time that the court would be setting it for a hearing.

The juvenile court again explained that it was not opposed to continuing the section 388 hearing, but if it continued the review hearing, it would not be set until sometime in mid-January and the court was not inclined to set it out that far. The juvenile court, consequently, was inclined to proceed with the six-month review hearing, and if the parties wanted to set over the contested hearing on the section 388 petition, the court would do that and direct the Agency to provide log notes with regard to any efforts by relatives to seek placement and follow up on the ICPC. Brenda's attorney agreed with the juvenile court that that would be her request. Accordingly, the juvenile court continued the section 388 hearing to January 12, 2015.

The juvenile court ordered that Brenda receive one visit per month at the Agency, with an additional monthly visit if it could be arranged between Brenda and the foster parents. The juvenile court proceeded with the six-month review hearing, terminated the parents' reunification services, and scheduled a section 366.26 hearing for April 9, 2015.

On January 6, 2015, David's caregivers filed a request for de facto parent status. The juvenile court set a hearing on the request for January 12, 2015.

On January 8, 2015, the Agency filed a report that contained additional information for the hearing, comprised of the (1) child welfare log notes, (2) letters and cards Brenda wrote to the caregivers which include their last name, and (3) a faxed letter from Frank and Annette requesting placement. On December 19, the Agency received a completed interest packet from Frank.

The Hearing on Brenda's Section 388 Petition

The contested hearing on the section 388 petition took place on January 12, 13 and 16, 2015. Brenda, Werb, Sabrina and David's caretakers, Mr. C. and Mr. H., who the juvenile court found to be de facto parents during the course of the hearing, testified. During the hearing, Brenda's attorney asked the juvenile court to amend the petition to address relative placement, arguing she had standing to raise the issue and there was no prejudice because the Agency had addressed the issue. After some discussion, the juvenile court allowed Brenda to amend the petition to include a request for an "expedited ICPC placement" with relatives in Texas. The trial court rejected Brenda's attorney's request to expand the petition to include any other relatives who had come forward.

Brenda testified that David was removed from her care because John had been coming to the house to do work for Darlene, but she claimed he never came inside the house, had contact with David, or visited David. Brenda did not think that John could even see David through the door. Brenda claimed she was never given any rules in "hard copy" when David was first placed in her home. Before David's removal, Brenda volunteered to the social worker that John had come to the house; the social worker advised her that David could be removed. After that, Brenda did not stop John from coming to the house and he stayed around in the neighborhood. She reported that to the social worker, and received the same response. Brenda helped John get out of Riverbank by paying for a room at the motel in Modesto. She gave John a ride there; David was not with them. When David was removed from her home, she was told that John could not associate with him and that he could drop David; she was not given any information on how to contest his removal.

Brenda contacted two attorneys concerning David's removal, but they were not able to help her. After the October hearing, Brenda contacted a third attorney, who she retained. Brenda waited to file the section 388 petition because she understood that

David was going to be placed with a relative in Texas. Brenda had spoken to Frank and Annette over the phone, and met Frank in person once. Brenda mailed Frank the relative application form.

After David was removed from her home, Brenda saw David every other week. In November, her visits were reduced to once per month. Brenda did not receive an extra visit in December. Brenda wanted the court to place David back with her. She said she could protect David because she would not hesitate “to find whatever help I could[,]” she would be more proactive, and she would “build a brick fortress around me.”

On cross-examination by John’s attorney, Brenda testified that she believed Werb or someone from the Agency had told her who could or could not be around David, but she “never got no hard copies on anything.” Brenda, however, believed she “signed a paper.”

On cross-examination by county counsel, Brenda testified that within a week of John’s release from jail, he came to her house about three times, but he had no contact with David. Brenda claimed she did not allow John to be around her house after the social worker advised her David could be removed. John, however, was doing “stuff” for Darlene. Brenda did not see any danger in that, as “he’s my son. I love my family.” David was in the car when she drove John from Riverbank to Modesto to see his lawyer around the second week of June. Brenda said this was before she was told that David could not be around John in the third week of June. Brenda admitted that before the second week of June she was aware that she was not to allow John to be around David, but she did not see a problem with him doing yard work outside.

On questioning by the court, Brenda admitted that she was told in April that John was not to be around David, and she knew this when she drove John from Riverbank to Modesto with David in the car. Brenda did not verbally tell the social worker about the car trip because she was scared, as friends had told her what could happen if John were around David, namely that David could be taken away. Brenda admitted that when she

filled out the placement paperwork, she was provided with a document, which she read, that stated that visits with parents at the relative's home without social worker approval could result in the child being removed from the relative's care. Although no one from the Agency told her how far John could be away from David, the Agency did provide her with the visitation rules, as she "got the paperwork[.]" On re-direct, however, Brenda testified that she did not recall reading the language concerning visitation when she filled out the placement paperwork.

On cross-examination by David's attorney, Brenda testified that John came to her home twice between June 8 and July 3. The first time was when she drove him to the lawyer. The work John performed for Darlene on June 12 was at Darlene's rental property, which was a block away from Brenda's house. Brenda spoke with John at the rental property that day, while Darlene watched David at Brenda's house. Brenda wanted to speak with John's lawyer because she had questions about John's options; she stayed at the lawyer's office with David the entire length of John's visit. After the visit, she drove John to one of his friend's in Riverbank with David in the car. After that, John came to her house another time, which Brenda told the social worker about after the social worker asked.

Social worker Werb testified that she was concerned about John being around Brenda's house due to his long criminal history that involved drugs and alcohol, since John could be high when around David, which in turn could cause him to harm David, be inappropriate around him, or even take him. Brenda seemed appropriate when Werb was at Brenda's home; the conversations Werb had with Brenda revolved around not having John at the home and where John was located. When Brenda told her on June 27 that John had been to her home, Werb was concerned that John had been inside the home. Werb did not advise Brenda on how to prevent John from coming to her home.

On July 3, Werb met with her supervisor and the CPS program manager, and spoke with someone who worked at Perry & Associates. When Werb removed David,

she did not provide Brenda with any information on how to protest his removal. Brenda had been appropriate during her visits with David. After David's removal, Werb mailed a placement letter and packet to Frank and Sammy, and Tout handed those items to Laura.⁷ Initially, Werb testified that she did not attempt to locate and identify other relatives for placement; neither did she direct anyone else to do so.

Werb requested the ICPC in September 2014 because she was fairly certain Tiffany and Sammy were going to return their packet, as they had shown real interest in having David placed with them. The request was just for Sammy; Werb did not request an ICPC for Frank because Frank's family told her they agreed it was in David's best interest to be with Sammy and Tiffany, since they had David's sibling. Werb understood that Frank wanted to be the back-up placement for Sammy.

Werb explained that the procedure for assessing an out-of-state relative is to send them an interest packet and, once that is returned, to ask the court for permission to begin the ICPC process. Once permission is given, the social worker fills out more paperwork and contacts the other state's social services department, who performs the home study and reports the results. Werb did not assess Sammy or Frank for placement, or begin the ICPC process, because she did not receive the interest packets from them. While the Agency finally received an interest packet from Frank on December 19, Werb was not aware of it having come in until December 31. She had not initiated an ICPC and did not intend to do so, since David had been placed with the caregivers for over six months, the ICPC could take three to four months, and although Frank was mailed an initial letter in April, he did not return the interest packet until December.

⁷ An offer of proof was made, and accepted by the parties and the juvenile court, that Werb would testify: (1) on July 22, relative interest packets were sent to Frank and Sammy in Texas; (2) in July or August, a second relative interest packet was sent to Frank in Texas; (3) on August 13, a second relative interest was sent to Sammy in Texas; and (4) on December 18, a third relative interest packet was sent via certified mail to Frank in Texas.

Werb was asked to explain the basis for her assertion that the Agency was not confident family members could keep David safe. Werb responded that with respect to Brenda, she clearly knew John could not be at her home without Werb's permission, but he was there, and she provided him with food, money and transportation with David in the car. Werb was confident that would continue if David were placed with Brenda. With respect to the family in Texas, Werb was told that while Sammy and Tiffany had custody of David's sibling, it was not a legal guardianship and they intended to return the sibling to Sabrina if she was able to care for him. Even if Texas approved the home, the Agency was concerned that Sammy and Tiffany would not protect David from Sabrina should she return to Texas. Werb had the same concerns about Frank and Annette.

On cross-examination by county counsel, Werb agreed that the Agency advised Brenda at least twice that David could be removed if she allowed contact with John, and that Brenda was put on notice that she was not to allow John to have contact with David through the placement paperwork she was provided when David was placed in her care. Werb confirmed that David was placed with Brenda under a general placement order, which was why she did not file a section 387 petition when she removed David, and that the Agency ultimately removed David from Brenda because he was not safe in her care. Werb also testified that she tried to locate relatives for placement after David was removed from Brenda by running a Youth Connections inquiry, which revealed the same relatives that were located when the inquiry was run in April. Werb then asked the foster care adoption unit who specialized in placement to search. At the same time, Werb became aware of the two Texas families who showed interest and mailed them packets. The Agency did not intend to assess relatives at that time, but would do so if David's current placement were disrupted.

Sabrina testified that she has four brothers and six sisters. The de facto parents both told the juvenile court that they loved David very much.

The juvenile court heard oral arguments on the petition. Brenda's attorney argued (1) the Agency abused its discretion, and her due process rights were violated, when it removed David from Brenda's care without filing a section 387 petition, and Brenda remained an appropriate care provider for David; and (2) the Agency abused its discretion in failing to properly pursue placement with other relatives after David was removed from Brenda, as it failed to notify relatives or investigate them up to the fifth degree, and failed to properly assess the Texas relatives under section 361.3 or give preferential consideration to placement with a relative. In response to the juvenile court's question about the appropriate remedy if the Agency should have filed a section 387 petition, Brenda's attorney stated that the Agency should be directed to file that petition, and allow Brenda an opportunity to be heard on the specific allegations. Brenda's attorney closed by stating that more than anything, Brenda wanted David placed back in her home, but if the court were unwilling to do so, she wanted an expedited ICPC for the Texas relatives who came forward. Sabrina's attorney agreed with this argument and Brenda's request. John's attorney also asked the court to grant the section 388 petition and place David with Brenda.

County counsel argued the Agency was not required to file a section 387 petition because there was only a general placement order, and Brenda's remedy was to file a section 388 petition, which she had done and by which she was having her day in court, and the Agency had no option but to remove David from her, as she was placing David at risk of harm. County counsel further argued that if Brenda was asking for placement again, she had failed to address David's best interests in any meaningful way, and had not met her burden of showing changed circumstances and best interests. County counsel argued the Agency had done everything it was supposed to do in assessing relatives for placement, the Texas relatives were not responsive to the Agency, and Brenda had not presented any evidence of why the requested order would be in David's best interest. Accordingly, county counsel asked the juvenile court to deny the petition.

David's attorney argued that the Agency acted appropriately when it removed David from Brenda's care; the real question was whether David's current placement was appropriate and whether the law directs at this late stage of the case that he should be removed from the de facto parents and placed back with relatives; that David's current placement was appropriate; since reunification services had been terminated, the focus shifted to David's need for permanency and stability, and the relative placement preference no longer applied; David had not lived with any of the Texas relatives and they had not even seen him; and the facts and law both pointed to continued placement with the de facto parents.

In rebuttal, Brenda's attorney argued that the relative preference was still in place since the petition was filed before services were terminated. She further argued it was presumed that when a child cannot be placed with a parent, placement with a relative was always in the child's best interest. She again asked the court to order either that David be returned to Brenda's care or that an expedited ICPC be ordered for Frank and Annette.

In ruling on the petition, the juvenile court first rejected Brenda's assertion that the Agency was required to file a section 387 petition before removing David from Brenda. The juvenile court reasoned that a section 387 petition was required only if the court had made a specific placement order with a particular individual, and because it had made a general placement order, a section 387 petition was not required. Accordingly, the court found the Agency did not abuse its discretion or behave improperly when David was removed from Brenda's care.

As to whether David should be placed in Brenda's care, the juvenile court explained that it had "real concerns" about Brenda's protective capacity and believed, based on her testimony, that she knew very well that John was not to have contact with David, but she also stated, "[T]hat's my son." The court believed that Brenda did not feel David would be in danger if John had contact with him, but that was not her decision to make, and she knew that allowing contact would cause David to be removed from her

care. The court was “appalled” that she would drive from Riverbank to Modesto and back with John and David in the car, and stay at the attorney’s office, and found this to be a clear violation of the rules and clear evidence of a failure to protect David. The court felt it was appropriate and necessary for the Agency to remove David.

With respect to Brenda’s request to return David to her care, the juvenile court believed there was a change of circumstances when David was removed from her, but questioned whether removing him from the de facto parents and placing him in her care would be in David’s best interest. The juvenile court agreed that children should be with relatives whenever possible, and noted that was what the Agency originally did when it placed David with Brenda. The juvenile court, however, found it was not in David’s best interest to be placed back in Brenda’s care as (1) David had been in her care for approximately two and a half months, while he had been in the de facto parents’ care for over six months and had an established relationship with them, (2) there was no evidence David was doing anything other than thriving in their care, and (3) to remove David again when he was not even a year old would be “even more traumatic” than the first removal.

Finally, with respect to relative placement, the juvenile court found that Werb in fact tried to look for relatives, sent them interest packets, filed the section 388 petition to initiate the ICPC process, and attempted to contact the Texas relatives, but neither Sammy nor Frank worked hard to get their assessments completed. The juvenile court noted that parents also have a responsibility to voluntarily identify potential relative placements and, although a relative placement must be assessed, placement in a relative’s home is a preference, not a requirement. The juvenile court was concerned why it would be in David’s best interest to require the Agency to follow up with placement in either the home of Sammy or Frank when absolutely no evidence had been presented that David had any type of connection, bond, or relationship with either relative. The juvenile court thus found that it would not be in David’s best interest to require ICPC placement unless David’s placement with the de facto parents was disrupted, and directed the Agency that

it was not required to pursue the ICPC process with either Frank or Sammy unless David's placement was disrupted.

DISCUSSION

Brenda contends the juvenile court erred in denying her section 388 petition. Specifically, she asserts the juvenile court erred in (1) finding that the Agency was not required to file a section 387 petition before removing David from her care; (2) denying her request to return David to her care; and (3) in denying her request for further assessment of the Texas relatives.

I. Brenda's Placement Request

Brenda first contends the juvenile court erred when it failed to order that David be returned to her care because she met her burden of showing changed circumstances and best interest. The juvenile court found that removing David from Brenda's care constituted a change in circumstances under section 388. Neither Brenda nor the Agency challenges this finding in this court. Instead, Brenda contends the juvenile court abused its discretion with respect to the second prong, best interests of the child. Brenda argues that the juvenile court was required to, but did not, consider the relative placement preference when determining whether it would be in David's best interest to return him to her and this failure, coupled with a lack of evidence of risk to David, means that the juvenile court abused its discretion in finding that placement with her was not in David's best interest.

Under section 388, a person having an interest in a dependent child may petition to modify a prior order "upon grounds of change of circumstance or new evidence." (§ 388, subd. (a)(1); see California Rules of Court, rule 5.570(a).) At a hearing on a section 388 petition seeking to change a child's placement, the moving party must show a change of circumstances or new evidence and that a change in placement is in the child's best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*))

We review the juvenile court's ruling on a section 388 petition for abuse of discretion (*Stephanie M., supra*, 7 Cal.4th at p. 318); this standard of review also applies to the extent denial of Brenda's section 388 petition might be viewed as a denial of relative placement under section 361.3. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067 ["We are persuaded that the abuse of discretion standard should be applied to the review on appeal of the juvenile court's determination regarding relative placement pursuant to section 361.3"].) Reversal is appropriate only if we find the court has made an arbitrary, capricious or "patently absurd" determination. (*Stephanie M., supra*, 7 Cal.4th at p. 318.) We do not inquire whether substantial evidence would have supported a different order, nor do we reweigh the evidence and substitute our judgment for that of the lower court. (*Ibid.*) We ask only whether the court abused its discretion with respect to the order it actually made. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

When a child is removed from parental custody under section 361 and a relative seeks placement under section 361.3, the juvenile court is to give "[p]referential consideration" to the request, meaning "that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) The relatives entitled to preferential consideration for placement include an adult who is a grandparent, aunt or uncle. (§ 361.3, subd. (c)(2).) The relative preference for placement is again at issue when a new placement is necessary: "Subsequent to the hearing conducted pursuant to Section 358 [the disposition hearing], *whenever a new placement of the child must be made*, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child." (§ 361.3, subd. (d), italics added.)

In determining whether relative placement is appropriate, the juvenile court and the Agency are to consider, among other factors, the best interests of the child; the parent's wishes; the placement of siblings and half siblings in the same home, if such placement is found to be in the best interest of each sibling; the nature and duration of the relationship between the child and the relative; the relative's "good moral character"; the nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and provide legal permanency for, the child; and the relative's ability to provide a safe, secure, and stable environment for the child, and to protect the child from his or her parents. (§ 361.3, subd. (a)(1) through (7).)

A prior removal of children from a grandparent's care does not necessarily constitute unsuitability under section 361.3, subdivision (d), and "does not bar a relative from being evaluated and considered for placement of a dependent child under section 361.3." (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 378; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1027 (*Cesar V.*) [a grandmother's prior child protective history did not bar her from being evaluated and considered for placement].)

Preferential consideration under section 361.3 is not a guarantee of placement. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798 (*Joseph T.*) ["[t]he relative placement preference ... is not a relative placement *guarantee*".]) Section 361.3 also does not create an evidentiary presumption that must be overcome before a child may be placed with a nonrelative over a statutorily qualified preferred relative. (*Stephanie M., supra*, 7 Cal.4th at p. 321.) The only requirement imposed by section 361.3 is that the court consider as a first priority whether placement with the relative "is appropriate, taking into account the suitability of the relative's home and the best interest of the child. [Citation.]" (*Stephanie M., supra*, at p. 321, italics omitted.)

Appellate courts concur in finding the relative placement preference set forth in section 361.3 unequivocally applies from detention through the disposition hearing. There is a split of authority however, on whether it applies during the entire reunification

period, up through termination of parental rights. (*In re R.T.* (2015) 232 Cal.App.4th 1284, 1300.) Some courts have interpreted the language in section 361.3, subdivision (d) that relatives shall again be given consideration for placement “ ‘whenever a new placement of the child must be made’ ” after the disposition hearing, to mean the preference applies after the disposition hearing *only* when a change in placement becomes necessary. (See, e.g., *In re Lauren R.* (2007) 148 Cal.App.4th 841, 854–855 (*Lauren R.*); see also *Cesar V.*, *supra*, 91 Cal.App.4th at pp. 1031–1032.) Another court, however, has found the preference applies throughout the entire reunification period and up until termination of parental rights, *whenever an adult relative comes forward and requests placement*, irrespective of whether the child is in a stable, acceptable placement and no change in placement is indicated. (*Joseph T.*, *supra*, 163 Cal.App.4th at pp. 794–795.) The panel in *Joseph T.* was divided however, with the dissent finding that the statutory language and legislative history supported the conclusion the preference applied post-disposition *only* when a change in placement was required. (*Id.* at pp. 799–800, conc. & dis. opn. of Mallano, J.)

Here, Brenda filed her section 388 petition after disposition, when no new placement was necessary. Relying on *Joseph T.*, she asserts the preference applied because she filed her petition during the reunification period, before the parents’ services were terminated, and the fact that it was not heard until after services were terminated was immaterial, as the preference still applied since parental rights were still intact.

Even if we were to agree with the court in *Joseph T.* that the relative placement preference applied throughout the proceedings, and the juvenile court erred by failing to consider all of the factors in determining whether placement with Brenda was appropriate, we find no prejudice. (*Joseph T.*, *supra*, 163 Cal.App.4th at p. 798 [the court’s failure to afford the relative placement preference to the child’s aunt and failure to state on the record its reasons for denying her placement request were harmless errors since the record contained ample evidence that the preference was overridden].) “The

overriding concern of dependency proceedings ... is not the interest of extended family members but the interest of the child. ‘[R]egardless of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that placement with a relative be rejected.’ [Citation.]” (*Lauren R.*, *supra*, 148 Cal.App.4th at p. 855.) “The passage of time is a significant factor in a child’s life; the longer a successful placement continues, the more important the child’s need for continuity and stability becomes in the evaluation of her best interests. [Citation.]” (*Ibid.*)

Here, the record shows the juvenile court reasonably could find that it was not in David’s best interest to remove him from his stable placement and place him with Brenda. The juvenile court’s primary concern was Brenda’s ability to protect David. In finding that Brenda was not protective of David, the juvenile court was persuaded by evidence showing Brenda’s loyalty to, and concern for, John might compromise her ability to keep David safe. That evidence included Brenda allowing John to have contact with David, including driving them to and from Riverbank, despite knowing that such contact was not allowed and could result in David being removed from her, and justifying her violation of the rules on the basis that John was her son. While Brenda asserts there was simply a “misunderstanding” between herself and the Agency regarding the extent to which John was permitted to be near David, this is not what the juvenile court found. Instead, the juvenile court found that Brenda knew John was not to have contact with David, including being together in the same car, yet she permitted the contact because she believed there was no danger.

Brenda contends there was no evidence that she presented a current risk of harm to David. She asserts her testimony that she would protect David from his parents by being “more proactive” and “build[ing] a brick fortress” around herself established that there was no continued risk of harm to David, and there was no contrary evidence from which a current risk of harm could be found. The juvenile court reasonably could find that this

testimony was not convincing, especially since Brenda continued to defend her actions on the basis that John was her son. Although the juvenile court did not make an express credibility finding, the juvenile court's remarks reveal that it did not find Brenda credible regarding either her ability to keep David safe in the future or her claimed lack of knowledge of the Agency's requirements.

At the time of the hearing on Brenda's petition, nine-month-old David had been living with his foster family for six months. It was undisputed that David was healthy and happy in the foster family's home, he had bonded with them, and the foster parents wanted to adopt him. These facts, when coupled with Brenda's inability to protect David, fully support the juvenile court's finding that it was not in David's best interest to remove him from his foster family and place him with Brenda. While Brenda takes issue with the juvenile court's statement that a change in placement would be traumatic to David, arguing it is speculative and not supported by the evidence, we review judicial action, not judicial reasoning (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876), and we determine whether there is substantial evidence to support the order the juvenile court made (*Stephanie M., supra*, 7 Cal.4th at p. 318.) Here, the juvenile court's order is fully supported by the evidence; moreover, this finding was not a significant factor in its decision, which was based primarily on Brenda's inability to protect David.

Although section 361.3 contemplates consideration of various factors, once reunification services were terminated David's need for permanency and stability became the paramount concern, with the ultimate issue being David's best interests. (*Stephanie M., supra*, 7 Cal.4th at pp. 317, 321 ["regardless of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child ..."].) While we may not have reached the same decision were we the trier of fact, we are not free to substitute our judgment for that of the juvenile court. Accordingly, we determine that even if the juvenile court erred by not considering the relative placement preference, the

error was harmless, and the juvenile court did not abuse its discretion when it denied Brenda's section 388 petition on the issue of returning David to her care.

We note that the circumstances that motivated the Agency to remove David from Brenda's care do not appear close to the more perilous situations we are often called upon to evaluate.

The social worker warned Brenda that David could be removed if she allowed John to have unauthorized contact with him, and the juvenile court found that Brenda knew about this restriction. We wish to emphasize the fact that social workers, who have difficult jobs, also have significant influence – particularly when acting under general placement orders. It is important that those entrusted with the care of children have clear, specific and unequivocal instructions and understanding of what is expected of them. It is equally important that our courts carefully consider the Agency's rationale for the conditions it chooses to place on a grandparent or other relative when failure to abide by such instructions, as here, can result in potentially dire consequences.

II. Section 387 Does Not Apply

Brenda next contends the juvenile court should have returned David to her care to correct a prior error, namely the Agency's removal of David from her without filing a section 387 petition. She asserts the juvenile court erred as a matter of law when it determined that the Agency was not required to file such a petition before removing David from her care. Although she concedes that David was placed with her under a general placement order, she argues that section 387 applies any time a child is moved from a relative's home to a more restrictive level of placement, even if the original placement was not court-ordered.

Section 387 provides, in pertinent part: “(a) An order changing or modifying a previous order by removing a child from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home ... shall be made only after noticed hearing upon a supplemental petition. [¶] (b) The supplemental petition ... shall

contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective” (§ 387, subds. (a), (b).)

It is well settled that section 387 applies only to an “ordered placement,” i.e., one ordered by the juvenile court. (*In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1489 (*Cynthia C.*)). It does not apply to a placement made by the social services agency pursuant to a general placement order which vests the agency with custody of the child and with the discretion to select a suitable placement. (*Id.* at pp. 1489–1490.) Pursuant to a general placement order, the agency may change the placement without filing a petition and without further court order. (*Ibid.*)

Here, the juvenile court did not make an ordered placement with Brenda; instead, its order, which never changed throughout the proceedings, vested custody with the Agency to select a suitable placement. Therefore, the Agency was authorized to exercise its discretion to reassess the suitability of the environment in which it placed David and, if deemed unsuitable, to move David to an improved situation. (*Cynthia C., supra*, 58 Cal.App.4th at p. 1490.)

Brenda contends that the general placement order concept is “outdated” and inconsistent with current case law, statutes and rules. First, she argues that because section 387 and California Rules of Court, rule 5.560(c),⁸ provide that a supplemental petition is required when a child is moved from a relative’s home to a more restrictive level of placement, a supplemental petition was required here, since David was moved from a relative’s home to foster care. But, in so arguing, Brenda ignores that section 387 specifically governs “proposed orders” that would have the effect of imposing a more restrictive placement (*In re K.C.* (2011) 52 Cal.4th 231, 238, fn. 2), and not the Agency’s

⁸ California Rules of Court, rule 5.560(c) provides, in pertinent part: “A supplemental petition must be used if petitioner concludes that a previous disposition has not been effective in the protection of a child declared a dependent under section 300 and seeks a more restrictive level of physical custody.”

exercise of its discretion in determining a suitable placement of a child under a general placement order.

Brenda contends that case law is clear that the original placement need not have been court-ordered for the provisions of section 387 to apply. The cases she cites, however, do not support her assertion. In *In re A.O.* (2010) 185 Cal.App.4th 103 (*A.O.*), the social services agency filed a supplemental petition under section 387 because it sought to modify a dispositional order which placed the child with the father under supervision of the social services agency and provided him family maintenance services after father was arrested and incarcerated. (*A.O.*, *supra*, at pp. 108–109.) In *In re H.G.* (2006) 146 Cal.App.4th 1 (*H.G.*), after the social services agency placed the child with her paternal grandparents, the juvenile court confirmed the placement order and authorized the grandparents to exercise the child’s educational rights and provide legal consent for her medical care. (*Id.* at pp. 5–6.) After the social services agency learned that the grandparents were allowing the father to have unauthorized contact with the child, it filed a section 387 petition alleging the child’s placement with the grandparents was no longer appropriate. (*H.G.*, *supra*, at p. 6.) Thus, contrary to Brenda’s assertion, there was a court order in place concerning the child’s placement, which required the filing of a section 387 petition.

Brenda next contends there is a split of authority on the question of the applicability of section 387 to removal from a relative under these circumstances, citing to *Dependency Quick Guide* (2007) H-204 – H-205, which cites to *In re Jonique W.* (1994) 26 Cal.App.4th 685 (*Jonique W.*), and *In re Joel H.* (1993) 19 Cal.App.4th 1185 (*Joel H.*), as reaching a conclusion opposite to *Cynthia C.*, *supra*, 58 Cal.App.4th 1479.⁹

⁹ The text states: “However, there is a split of authority on the issue of whether removal from a relative (or nonrelative extended family member) caregiver necessarily requires a petition under section 387. One position holds that if the juvenile court simply enters a ‘general placement’ order at disposition (thereby placing the child in the ‘care and custody’ of the agency), the agency has discretion to remove the child from a relative

These cases, however, addressed whether a relative who was also the dependent child's de facto parent lacked standing to contest a supplemental petition under section 387, not whether a section 387 petition was required to remove the child from that relative.

(*Jonique W.*, *supra*, 26 Cal.App.4th at p. 690; *Joel H.*, *supra*, 19 Cal.App.4th at p. 1190.)

Finally, Brenda contends that *Cynthia C.* is factually and legally distinguishable from the present case. She asserts the case differs factually because there, the child was removed from one relative and placed with another relative, and therefore there was no issue of the child being moved to a more restrictive level of custody. (*Cynthia C.*, *supra*, 58 Cal.App.4th at p. 1484.) Brenda, however, ignores the other facts of the case, namely that the stay with the second set of relatives lasted only two weeks and the child ultimately was placed in a foster home. (*Ibid.*) Therefore, the child was moved from a relative placement to a more restrictive level of placement.

Brenda asserts the case is legally distinguishable because it was decided “prior to the effective date of important legislative revisions to section 387[,]” which changed the requirements for removing a child from a relative. !(AOB 62)! Specifically, she cites to the 1997 revision, which added the requirement that, in the case of a relative, the supplemental petition must contain a concise statement of facts “sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.” (A.B. 1195, Stats. 1997, ch. 793, § 28; see *H.G.*, *supra*, 146 Cal.App.4th at p. 14, fn. 9 [“The

to a placement it deems more suitable; a supplemental petition is not necessary. Further, the relative's status as a de facto parent does not confer a right to continued placement nor trigger the need for a petition or hearing. (*In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1481, 1490.) But two appellate districts have reached the opposite conclusion, finding that (1) removal from a custodial relative, especially one whose conduct is central to the question of placement, requires filing of a supplemental petition that the relative has standing to contest (*In re Jonique W.*, *supra*, 26 Cal.App.4th at p. 693); and (2) a relative caregiver recognized as a de facto parent has standing to challenge a section 387 petition (*In re Joel H.*, *supra*,] 19 Cal.App.4th [at p.] 1196).” (*Dependency Quick Guide* (2nd Ed. 2011) H-222–H-223.

Legislature added specific language for relative placement because the existing law did ‘not provide a clear statutory standard for removal of children from a relative foster care provider][,]’ ” and therefore the legislative history suggests that a court must evaluate the criteria under section 361.3 when it seeks to remove a child from placement with a relative.]) She asserts this evaluation can only take place when the issue is brought to the court via a section 387 petition.

But that revision did not change the language in section 387 that a supplemental petition is required when the petitioning party seeks “[a]n order *changing or modifying a previous order.*” (§ 387, subd. (a), italics added.) As the court in *Cynthia C.* explained, “[t]he statute unambiguously governs situations involving an *ordered* placement which the agency later considers ineffective.” (*Cynthia C.*, *supra*, 58 Cal.App.4th at p. 1489, italics in original.) Here, there was no order placing David with Brenda. Instead, there was a general placement order. Accordingly, the Agency was not required to file a section 387 petition before removing David from Brenda’s care.

Although we have rejected Brenda’s attempt to avoid section 387’s requirement of a specific placement order, we note that she had the opportunity, through her section 388 petition, to litigate both the propriety of the Agency’s removal of David from her care and her request to have him returned to her. We are troubled, however, that a relative with whom a dependent child has been placed under a general placement order does not have greater protections given the Legislature’s stated preference in section 361.3 for relative placement. This preference may be undercut when a social service agency can remove a child from a relative only on its own discretion, without a prior order from the juvenile court or at least juvenile court review of placement conditions. While a relative may seek to challenge the removal and ask for return of the child by filing a section 388 petition, this places the burden on the relative to show that the removal was an abuse of discretion and it is in the child’s best interest to return the child, rather than on the social service agency to show that removal is necessary to protect the child. We encourage the

Legislature to consider how to strengthen the preferential consideration for relative placement in situations where a dependent has been placed with a relative under a general placement order.

III. No Standing to Challenge Assessment of Texas Relatives

Brenda contends the juvenile court abused its discretion when it denied her request for an expedited ICPC assessment of the Texas relatives because (1) the juvenile court disregarded the relative placement preference and failed to protect David's interests, and (2) the Agency previously had failed to adequately identify and notify relatives both when David was removed initially from his parents and when he was removed from her, in violation of section 361.3. The Agency argues that Brenda does not have standing to raise these issues on appeal because she was not aggrieved by the juvenile court's order regarding the Texas relatives or the Agency's alleged failure to assess other relatives. We agree.

Although standing to appeal is to be liberally construed (*In re Matthew C.* (1993) 6 Cal.4th 386, 394), "whether one has standing in a particular case generally revolves around the question whether that person has rights that may suffer some injury, actual or threatened." (*Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 751.) Any "aggrieved party" has standing. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736.) Any person "having an interest recognized by law in the subject matter of the judgment, which interest is injuriously affected by the judgment," is considered a " 'party aggrieved' " for purposes of appellate standing. (*Joel H.*, *supra*, 19 Cal.App.4th at p. 1196; see also *In re Harmony B.* (2005) 125 Cal.App.4th 831, 837.) In other words, a party is aggrieved if that party's own legal rights are affected. (*In re P.L.* (2005) 134 Cal.App.4th 1357, 1361.) In the absence of standing, "there is no justiciable controversy for a court to entertain." (*Ibid.*)

Here, Brenda does not have standing to complain about the Agency's alleged failure to assess other relatives or the juvenile court's order denying her request for an

expedited ICPC of the Texas relatives, because she was not legally aggrieved by either the Agency's failure or the juvenile court's decision. While Brenda has standing to appeal the denial of her request to return David to her (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 703), her individual interests are not affected by the failure to assess, or to order the assessment of, other relatives. (See, e.g., *In re Crystal J.* (2001) 92 Cal.App.4th 186, 191–192 [child did not have standing to appeal court's denial of de facto parent status to the child's aunt and uncle]; *In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541–1542 [mother has no standing in appeal from order terminating her parental rights to argue that the child's bond with the foster parents should not be disrupted]; *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1835 [mother lacked standing to appeal court's denial of maternal grandmother's request to be accorded de facto parent status and to argue the court erred in not appointing counsel for the grandmother].)

Citing to cases that she contends share a “broad interpretation of standing” that encompasses the rights of those close to a dependent child to make a legal argument regarding their own rights as well as those of the child, she urges us to interpret the phrase “aggrieved person” broadly. If we do so, she contends, we will find she was an “aggrieved person” with regard to the placement decisions concerning David because, in addition to her interest in preserving her own relationship with him, she has an interest in preserving his relationships with other family members and ensuring his well-being, ongoing family relationships, and that he is raised by family members. The cases she relies on, however, *In re Gloria A.* (2013) 213 Cal.App.4th 476 (*Gloria A.*), *In re Clifton B.* (2000) 81 Cal.App.4th 415 (*Clifton B.*), and *In re Vincent M.* (2008) 161 Cal.App.4th 943 (*Vincent M.*), do not support her contention that standing should be interpreted to include more than the appellant's own interests.

In *Gloria A.*, the appellate court concluded that a grandfather had standing to challenge the juvenile court's subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, §§ 3400 et seq.) because the

juvenile court's assumption of jurisdiction injuriously affected *his* rights and interests. This was because the juvenile court's jurisdiction precluded him from enforcing a temporary guardianship order that a Mexican family court had issued in his favor and from enforcing any subsequent orders from the Mexican court pertaining to the child. (*Gloria A.*, *supra*, 213 Cal.App.4th at pp. 478–479, 482.)

In *Cliffon B.*, the appellate court held that a father had standing to raise a claim of ineffective assistance of counsel on his children's behalf because independent representation of his children's interests impacted the *father's* interest in the parent-child relationship. (*Cliffon B.*, *supra*, 81 Cal.App.4th at p. 427, fn. 6.)

Finally, in *Vincent M.*, the court of appeal held that de facto parents who intended to adopt the child had standing to appeal an order granting a biological father's section 388 petition, declaring him to be a presumed father, and directing the social services agency to prepare a report concerning reunification services. The appellate court concluded the *de facto parents'* rights and interests were injuriously affected by the ruling, since: They had already completed an adoption home study and were approved for adoption; the child was placed with them with the expectation it was an adoptive home; the juvenile court permitted them to litigate in opposition to the petition, gave them access to the court file, and told them they could appeal the decision; the ruling took the case off the adoption track and could result in the father obtaining custody of the child; and this was the de facto parents' only chance to challenge the petition. (*Vincent M.*, *supra*, 161 Cal.App.4th at pp. 952–953.)

In each of these cases, the appellate court found standing based on the injurious effect of the juvenile court's ruling on the appellant's own interests. Here, in contrast to these cases, Brenda is not asserting her *own* interest in a relationship with David when she argues that other relatives should have been assessed, but instead *David's* interest in maintaining his relationship with his Texas relatives and his half brother. Brenda argues she has standing because the juvenile court allowed her to litigate this issue below, citing

Vincent M. While the appellate court in *Vincent M.* noted in its discussion of standing that the lower court had allowed the de facto parents to participate in the litigation on the section 388 petition, that was not the sole basis for its conclusion that the parents had standing and it did not suggest that standing could be found in the absence of some showing that the appellant's own interests were injuriously affected.

We recognize that Brenda loves and care for David, and has an interest in seeing him raised by relatives. However, Brenda, in her capacity as a relative, did not suffer cognizable injury to her *legally* protected rights when the court did not order an expedited ICPC of the Texas relatives. Therefore, she lacks standing to appeal that decision.

DISPOSITION

The order is affirmed.

POOCHIGIAN, J.

WE CONCUR:

LEVY, ACTING P.J.

KANE, J.