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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

SHEILA M. et al.,

Defendants and Appellants.

G047646

(Super. Ct. Nos. DP021917 &
DP021918)

O P I N I O N

Appeals from a judgment of the Superior Court of Orange County, Deborah C. Servino, Judge. Affirmed.

Megan Turkat-Schirn, under appointment by the Court of Appeal, for Defendant and Appellant Sheila M.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant Fernando L.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

* * *

Parents Sheila M. (Mother) and Fernando L. (Father) appeal from the judgment terminating their parental rights to Aaron L. and Leah L. Mother's primary contention is that the court erred by failing to apply the sibling bond exception to adoption as the preferred disposition when parents are unable to reunify with their children, and also argues the court abused its discretion by refusing to order the children placed with family members who were interested in adoption, rather than with strangers. Father's primary argument is that the court abused its discretion in denying his petitions for reinstatement of services and for an order placing the children with family members. Both Mother and Father join in each other's arguments.

We affirm the judgment.

FACTS

Aaron, then age 7, and Leah, then age 21 months, were removed from the custody of their parents in November of 2011, along with their half-sisters on Mother's side, Caroline B. and Laura B., ages 13 and 12, respectively. The removal was the culmination of a series of visits by a representative of the Orange County Social Services Agency (SSA) to the home, following an initial report the home was dirty in early October. Those visits revealed the home to be unsafe as a result of extreme clutter and unsanitary conditions. On each visit, Mother, who was on disability, would explain she was trying to clean things up but was overwhelmed and receiving little assistance from other family members.

On November 15, the police and fire departments responded to a report of water leaking into the apartment downstairs from the family home. When they came upstairs to ascertain the source of the water, they found there was a faucet turned on over a bathroom sink which had no pipes connected underneath, causing the water to flow onto the floor and down into the apartment below. Leah was walking around the home unsupervised while both Mother and Father were asleep. The social worker who had been previously monitoring the home's condition was called to the scene, and she reported the home appeared to be in even worse condition than it had been on previous visits. Based on the deteriorating condition of the home, as well as a history of domestic violence between Mother and Father, the children were taken into protective custody.

The dependency petition, governing all four children, was filed on November 17, 2011, and alleged jurisdiction based on the parents' failure to protect (Welf. & Inst. Code, § 300, subd. (b); all further statutory references are to this code.) The petition alleged the children were subject to a substantial risk of harm due to: (1) the extreme unsanitary conditions found within the home; (2) a history of domestic violence between Mother and Father while the children were present in the home; (3) Father's unresolved history of substance abuse; (4) Father's criminal history; (5) Mother's history of criminal substance abuse; and (6) the criminal and substance abuse history of Caroline and Laura's father.

The petition also alleged that another child of Father's (Aaron and Leah's half-brother Anthony), had been the subject of a dependency case filed in January 2007, also based on neglect and failure to protect. Father failed to participate in his court-ordered reunification plan and his parental rights to Anthony were terminated in April 2008. Anthony was successfully adopted by his paternal grandparents.

After the children were detained, Caroline and Laura were placed with their paternal grandmother, where they remained throughout the course of the dependency

proceedings. Neither their placement, nor the disposition of the case as it pertains to them, is at issue in this appeal.

Aaron and Leah were initially placed with “a non-related extended family member.” (Initial capitalization omitted.) In January of 2012, both Mother and Father submitted to the court determining jurisdiction on the basis of SSA’s reports, and the court found the allegations of the petition to be true. According to SSA, Father appeared to have a bond with the children but was uncooperative with SSA, apparently because he had “ill-feelings” toward it as a consequence of his son Anthony’s earlier dependency case. Mother was believed to have “an unresolved issue with mental health and possibly with substance abuse. She has confessed that she is overwhelmed by her life and is ‘lost.’” SSA opined that the family’s prognosis for reunification was only “fair,” based on “[M]other being so overwhelmed that she is almost nonfunctional and . . . [F]ather being so uncooperative.” SSA noted further that “[i]t is sad to see the parents being so unable to function in reality with no ability to accept help when offered.” The court ordered reunification services for both Mother and Father, and ordered visitation twice per month.

In April 2012, Aaron and Leah’s caretaker notified SSA she was no longer willing to care for them. SSA reported that at that time, there were no relatives willing and able to take custody of Aaron and Leah. Specifically, SSA reported contacts with Aaron and Leah’s paternal grandparents, who declined to have the children placed with them on the ground they were unwilling to “enable the parents.” The grandparents also informed the social worker that although paternal uncle Paul L. (Uncle) would also be unwilling to take immediate custody of the children, he was willing to adopt them later. The social worker explained that SSA was seeking an immediate placement option for the children, and once that was found, it did not intend to move the children again unless the placement failed, so this was the time for family members request the children be placed with them. The social worker emphasized that family members might not have

the opportunity to request placement of the children with them in the future. The grandfather responded to that warning by “bec[oming] upset and stat[ing] that he will hire a lawyer if needed, but these children will only be adopted by family.”

The social worker also contacted Uncle directly, and he confirmed that while he and his wife (Aunt) were interested in adopting the children “if the reunification services fail,” they were unwilling to “foster” the children at that time because his family was in the midst of purchasing, and possibly building, a new home. When the social worker explained to Uncle that finding an immediate placement option for Aaron and Leah was the highest priority, emphasizing that SSA’s goal was to “place the children in the most permanent home as soon as possible” and thus that his refusal of such a placement in the short term might mean losing the opportunity to seek custody in the future, Uncle was undeterred. Instead, his response was similar to that of the grandfather: although he would not accept a foster placement of the children to address their immediate need, should reunification services prove unsuccessful in the future, he would “hire a private lawyer to fight for the children at that time.”

In April of 2012, Aaron and Leah were placed in the confidential foster/adoptive home of Edgar and Patricia G. They began to thrive. Aaron told SSA that “although he would rather live with his parents, he would be happy living with his foster parents.” For their part, Patricia and Edgar G. were interested in adopting both Aaron and Leah.

Meanwhile neither Mother nor Father was compliant with their reunification plans. In connection with the six-month review hearing scheduled for June 2012, SSA reported Father had missed 27 drug tests from January through June 2012, and failed to communicate with SSA or engage in parenting education, general counseling or substance abuse programs. Likewise, Mother’s compliance with her case plan was characterized as “none.” (Capitalization omitted.) She was terminated from both her parenting class and her counseling for non-attendance. She missed 26 of 28 drug tests.

Between December 2011 and June 2012, Father and Mother visited Aaron and Leah a total of nine times, and only two of those visits took place after January of 2012.

Based upon the noncompliance of both Mother and Father, SSA recommended the court terminate reunification at the six-month review hearing held in July 2012. The court accepted that recommendation and ordered termination of reunification efforts. The court scheduled a permanency hearing pursuant to section 336.26 for November 2012.

The following month, in August 2012, Aunt and Uncle contacted SSA and stated they were then ready to accept placement of Aaron and Leah in their home. The social worker explained to them that they had been given that opportunity back in April, but had declined. Now that Aaron and Leah had been placed elsewhere, and were doing very well, SSA was not looking to move them. According to SSA, Aunt acknowledged this was what they were told might happen back in April, but she and Uncle “thought we had more time,” and did not believe SSA would really deny them placement at a later date.

In preparation for the section 366.26 hearing, SSA reported there were two prospective adoptive homes for Aaron and Leah; their current home with Patricia and Edgar G., and their Aunt and Uncle’s home. In September 2012, SSA began arranging monthly monitored visitation between Aaron and Leah and their Aunt and Uncle’s family, so the social worker could evaluate how they interacted. The visits were reported to have gone very well.

SSA assessed Patricia and Edgar G. as prospective adoptive parents, and reported them suitable and with an approved home study. The report reflects that while Patricia and Edgar G. are interested in adopting, they are not interested in becoming legal guardians to Aaron and Leah.

SSA assessed Aunt and Uncle as prospective adoptive parents as well, and the result of that assessment was also positive. Aunt and Uncle were settled with their

family in their new home, surrounded by other family members in the immediate area, and reported having purchased a 12 passenger van suitable for transporting their own five children, plus Aaron and Leah.

Aaron was also interviewed about the prospect of adoption. He described himself as having “two families,” referring to his birth family and his foster family, and stated that in an ideal world, he would live with both families, including his sisters and cousins. When he was asked who he would turn to for help if he was hurt or needed something, Aaron responded he would ask his prospective adoptive parents. He also expressed pride in his room and the books he has. Leah was too young to verbalize any preferences but was observed seeking Patricia and Edgar G. when she needed something, and referred to Patricia as “‘momma.’”

On November 14, 2012, the date of the section 366.26 hearing, Father filed two petitions pursuant to section 388. The first asked the court to vacate the section 366.26 hearing and reinstate his reunification services, on the basis he had achieved sobriety at some point after the court ordered termination of his reunification services in July 2012, and he was on the wait list for an alcohol and drug recovery program. He pleaded for more time. Father’s second petition argued the court should place the children with either their paternal grandparents, who after initially declining to assume custody had decided they wanted the children placed in their home. The petitions were opposed by both SSA and minor’s counsel, who asserted that neither petition demonstrated any significant change in circumstances as of that point, but instead merely reflected a last-minute attempt to gain more time in which a meaningful change might be demonstrated in the future.

With respect to the Father’s petition seeking placement of the children with his own parents, SSA argued there was no meaningful change of circumstances demonstrated, since the paternal grandparents had been tangentially involved in the proceeding from the beginning, “and had been told repeatedly that if they could set

appropriate boundaries with their children, they could be assessed for placement. [¶] However, . . . they have never done that. . . . They have another child in their care that they adopted and they still allow the parents to come there. They never protected appropriately by setting appropriate boundaries with their own son.” And there was no claim, let alone any factual showing, that dynamic had changed. Moreover, as SSA pointed out, Father also made no showing that placement with the paternal grandparents would be in Aaron and Leah’s best interests, beyond the conclusory assertion that “it would be in the best interest to be with a family member.” The court summarily denied both petitions at the hearing.

Turning to the substance of the section 366.26 hearing, the court ruled that both Aaron and Leah were adoptable and that none of the statutory exceptions to adoption applied. Both Father’s and Mother’s parental rights to both children were terminated, and the court denied the request to place the children with Aunt and Uncle. At the request of SSA, the court made specific findings supporting its decision to deny Aunt and Uncle’s request to have the children placed with them: “The court had considered what was put forth in the [section 366.]26 report and is going to state for the record that placement with those relatives is denied based on the best interest of the children. [¶] At this point the children have been in their foster placement for approximately six months [¶] . . . [¶] . . . [T]he children do have, [a]s the court recognizes, and the Legislature has recommended, a real need for some permanence. It’s not something that somebody thinks about one day and then changes their mind the next day. [¶] And . . . Aaron point blank says in the report that when he has a need that the person he turns to is his foster parents as this point, so the court finds that it is not in the best interest to place the children with their paternal aunt and uncle.” The court also found that SSA “went above and beyond, and emphasizing each time they interacted with the aunt and uncle, that this was because of the scenario of trying to keep the change in

placement to a minimum in order for them . . . and that the aunt and uncle at various times were not willing to do that.”

DISCUSSION

1. Sibling Bond Exception to Adoption

Mother, joined by Father, first contends the court erred by failing to determine that Aaron and Leah’s interests in maintaining their sibling relationships with Caroline and Laura were so significant as to outweigh “the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).) As Mother acknowledges, the burden of demonstrating such error is a heavy one, because “[b]road deference must be shown to the trial judge. The reviewing court should interfere only ‘‘if [it] find[s] that *under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he [or she] did.’ . . . ’’ . . . That is a quintessentially discretionary determination. The juvenile court’s opportunity to observe the witnesses and generally get ‘the feel of the case’ warrants a high degree of appellate court deference.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351, italics added.)*

And when considered in the context of that highly deferential standard, Mother’s argument necessarily falls short. In support of her assertion that Aaron and Leah enjoy a very significant sibling bond with Caroline and Laura, Mother relies almost exclusively on the statements of those older children. Although she concedes that the interests of Caroline and Laura are not directly relevant here (*In re Celine R.* (2003) 31 Cal.4th 45, 49-50, [“the court may reject adoption under [the] sibling relationship provision only if it finds adoption would be detrimental to the child whose welfare is being considered. It may not prevent a child from being adopted solely because of the effect the adoption may have on a sibling”]), Mother asserts that their characterizations of the significance of their sibling relationships should be viewed as reflecting the feelings

of Aaron and Leah as well. She suggests that such extrapolation is necessary because Leah was too young to express any preference, and Aaron was “[u]nable to articulate verbally *as well as his older sisters . . . his distress about his family’s separation . . .*” (Italics added.)

The flaw in Mother’s argument is that it amounts to merely an assertion there was sufficient evidence to support a determination contrary to the one reached by the court below. Her claim, stated another way, is that the court could have reasonably interpreted the statements of Caroline and Laura as demonstrating *they* felt a strong sibling bond with Aaron and Leah, and it could then have reasonably inferred Aaron and Leah themselves reciprocated that feeling. (*In re Celine R., supra*, 31 Cal.4th at p. 55 [“A nonadoptive sibling’s emotional resistance towards the proposed adoption may also implicate the interests of the adoptive child”].) But we cannot indulge inferences which do not support the decision reached by the court below. Equally reasonable inferences would be that: (a) Leah was too young to *form* any significant attachment to Caroline and Laura; and (b) Aaron did not “articulate” his “distress” at the breakup of his family because he did not *feel* significant distress. However keenly Caroline and Laura might have felt the loss of their sibling relationships with Aaron and Leah, we cannot conclude the court was *compelled* to conclude Aaron or Leah felt the same way, or would themselves suffer significant detriment from the loss of those relationships.

And in any event, it is not clear from the record before us that even Caroline and Laura viewed their sibling bond with Aaron and Leah so strongly. Neither testified at the hearing, and Mother bases her characterization of their feelings solely on a summary of both girls’ responses to a “Goltra sentence completion form” contained in the report SSA submitted to the court in December 2011 – nearly a year before the section 366.26 hearing. Mother points to no evidence suggesting that Caroline and Laura visited with Aaron and Leah during the reunification period, or that any of these children

expressed any strong desire to do so in the time between their initial detention and the section 366.26 hearing.

Under these circumstances, we find no abuse of discretion in the court's determination that Aaron and Leah's interest in maintaining their relationship with Caroline and Laura did not outweigh the benefit they would obtain by achieving legal permanence through adoption.

2. *Preferential Placement With Relatives*

Both Mother and Father argue the court also abused its discretion at the section 366.26 hearing when it refused to order the children removed from the home of Patricia and Edgar G., where they had been residing for approximately 7 months, and placed with Aunt and Uncle. Both families were interested in adopting the children and had been evaluated as suitable prospective adoptive homes.

In effect, both Mother and Father assert the court was obligated to prefer an available placement with relatives, without regard to how long Aaron and Leah had been living with their non-relative caretakers, how well they were doing in that home, or how firmly bonded they were with those potential adoptive parents. There is no such rule.

Section 361.3 is the statutory provision which governs preferential placement with relatives. Initially, it comes into play at the dispositional hearing, requiring that "[i]n 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, regardless of the relative's immigration status." (§ 361.3, subdivision (a), italics added.) The statute makes clear that "preferential consideration" does not guarantee preference in placement. In fact, the statute specifically defines preferential consideration as merely a requirement "that the relative seeking placement shall be the first placement *to be considered and investigated.*" (§ 361.3, subdivision (c)(1), italics added.)

And when it comes to the actual placement decision, the statute requires the court to consider a host of factors “[i]n determining whether placement with a relative is appropriate” (§ 361.3, subd. (a).) Among the factors required to be considered is “[t]he best interest of the child, including special physical, psychological, educational, medical, or emotional needs,” (§ 361.3, subd. (a)(1)); “[t]he nature and duration of the relationship between the child and the relative, and the relative’s desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful” (§ 361.3, subd. (a)(6)); and “[t]he ability of the relative to . . . [¶] (A) Provide a safe, secure, and stable environment for the child. [¶] (B) Exercise proper and effective care and control of the child. [¶] (C) Provide a home and the necessities of life for the child. [¶] (D) Protect the child from his or her parents.” (§ 361.3, subd. (a)(7).)

Perhaps more significant for our purposes, section 361.3 also makes clear that in the wake of the dispositional hearing, the obligation to give relatives preferential consideration for placement comes into play only when the child’s *existing placement fails*. Subdivision (d) of section 361.3 provides that “[s]ubsequent to the hearing conducted pursuant to Section 358, *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.” (Italics added.) In other words, it is the child’s need for a new placement, rather than a relative’s willingness to offer one, that triggers the required statutory preference.

This rule is exactly what the social worker explained to both Aunt and Uncle and the paternal grandparents, when the children’s initial caretaker informed SSA she could no longer care for them in early 2012. Both couples were told that Aaron and Leah were in need of immediate placement and if they declined immediate placement, they might not have another opportunity in the future. Specifically, the social worker “explained that SSA will not be moving the children again unless placement fails.” And

of course, the placement found for Aaron and Leah, with Patricia and Edgar G., did not fail. By all accounts, it proved quite successful and could be expected to become permanent. Under those circumstances, the court certainly does not commit error by declining to disrupt it on the sole ground that relatives had finally stepped forward to offer an option. “Once reunification services are ordered terminated, the focus shifts to the needs of dependent children for *permanency and stability*.” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1320, italics added.) Thus, “regardless 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.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321)

3. Denial of Section 388 Petitions

Finally, Father argues the court erred by summarily denying his two petitions seeking a change in prior orders based on an alleged change in circumstances. Father’s petitions were filed on the day of the section 366.26 hearing and were based on section 388, subdivision (a)(1), which provides that “[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to Section 360 for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.”

In order to prevail on such a petition, the party seeking the change must demonstrate, by a preponderance of the evidence, that: (1) new evidence or a change in circumstances exists; and (2) a change in the prior order would promote the child’s best interests. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Here, Father’s petitions asked the court to: (1) revoke its prior order terminating his reunification services and provide him with an additional period of reunification, based on evidence that in the four months

since the court terminated services, he had achieved “sobriety,” completed “Level 1 of Operation Solid Lives Intensive Discipleship Program” and otherwise made progress “in resolving the issues that brought this case into being”; and (2) modify its order allowing SSA to place the children with Patricia and Edgar G., based on evidence that the paternal grandparents are “willing and able to be caretakers of the children” and to “pay for higher education,” and that it would be in the children’s best interests “to be with their grandparents rather than strangers.”

Although a section 388 petition must be “liberally construed,” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309) and “[t]he parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing” (*id.* at p. 310), “[t]he 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, italics added.) Moreover, when “determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case.” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

a. Petition seeking reinstatement of services

In summarily denying Father’s petition seeking reinstatement of his reunification services, the court explained that while there was evidence of some changed circumstances, there was no prima facie showing that a reinstatement of services would promote the children’s best interests. We find no error in this determination. Assessing whether a change in circumstances warrants a change or modification to a prior court order is complicated business, and various factors should be examined. As explained by this court in *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530, “[m]ost of the time such factors will fall along a continuum, *one extreme of which is the notion that just because a parent makes relatively last-minute (albeit genuine) changes he or she is entitled to return of the child,* the other is the obvious attractiveness of insuring that the child

remains with highly functional caretakers. Neither extreme can be dispositive. In the middle are a number of factors which may be derived from the existing dependency statutes themselves, and which drive a case in one direction or another.” (Italics added.) This court then summarized the relevant factors as “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been. While this list is not meant to be exhaustive, it does provide a reasoned and principled basis on which to evaluate a section 388 motion.” (*Id.* at p. 532.)

In this case, the changed circumstances relied upon by Father essentially describe the initial extreme of the *Kimberly F.* continuum. He has made a last-minute, albeit genuine, change by confronting his substance abuse problem and achieving a period of sobriety. It is not a trifling step. But that being said, the record here certainly reflects that Father’s substance abuse problem is both serious – it appears he did not even attempt sobriety until after the court ordered termination of services – and of long duration. Father’s problem dates back to at least 2007, and had already resulted in the termination of his parental rights to another child in April 2008. Under these circumstances, it would be unreasonable to construe Father’s four-month period of sobriety as reflecting anything more than a *possibility* he would actually resolve his substance abuse problem in the future and be able to resume custody of Aaron and Leah.

Moreover, Father’s assertion that Aaron and Leah’s “best interests” would be served by reinstating reunification so as to pursue that possibility, included no effort to assess the relative strength of the bond he enjoyed with Aaron and Leah, as compared with the significant bond they had apparently developed with their caretakers, Patricia and Edgar G. Instead, Father’s petition simply asserts, in conclusory fashion, that “it is in the best interest of the children to reunify with capable biological parents.” The court

was not obligated to treat that unsupported assertion as fact, and in the absence of evidence suggesting it was true *in this case*, the court was free to reject it summarily.

Because Father failed to make a prima facie showing that in light of his recent achievement of sobriety in the months following the termination of reunification services, it would be in the best interests of Aaron and Leah to order those services reinstated, we conclude the court did not err in summarily rejecting his petition seeking such an order.

b. Petition for order placing children with relatives

Father's second petition sought modification of the court's earlier order allowing SSA to place the children with Patricia and Edgar G., based on evidence that the paternal grandparents are "willing and able to be caretakers of the children" and to "pay for higher education," and that it would be in the children's best interests "to live with their grandparents rather than strangers." The court summarily denied this petition on the ground that it failed to make a prima facie showing of either changed circumstances or new evidence, or that a modification of the prior order would be in the children's best interests.

In the main, Father's challenge to this order fails for the same reason we rejected the earlier assertion that the court was obligated to place the children with Aunt and Uncle – i.e., the court has no reason, let alone an obligation, to consider alternatives to an existing *successful placement*, merely because relatives have belatedly come forward to offer one. Unless the children are in need of a new placement, the sudden emergence of such an alternative does not qualify as a material change in circumstance.

Further, Father made no evidentiary showing that a change in the children's placement would be in their best interests. The argument that it would was based on two things: first, that the grandparents would pay for higher education; and second, that it was better to live with grandparents than with "strangers." As to the first point, there was

no showing that the children's current caretakers, Patricia and Edgar G., would not be willing to pay for higher education. And as to the second, it simply ignores the fact that as of the time of the petition, Patricia and Edgar G. had been caring for the children for seven months. Leah was reported to be happy in the home, while Aaron expressed that if he could not live with his parents, "he would be happy being adopted by [Patricia and Edgar G.]" Aaron and Leah referred to Patricia and Edgar G. as "mom and dad" and "mommy and daddy," respectively. They were hardly "strangers." Under these circumstances, the court did not err by concluding that Father failed to make the requisite prima facie showing necessary to warrant a hearing on this petition.

Father's final assertion is that although section 361.3 did not obligate the court to consider placement with the grandparents at the section 366.26 hearing, the court and SSA put the statute "at issue" by expressly *considering* the statute in the context of his section 388 petition, and making findings to justify denial of placement with the grandparents in accordance with its requirements. According to Father, this voluntary consideration of section 361.3 obligated the court and SSA to also conduct an assessment of the grandparents' home in accordance with its requirements, to determine the home's suitability in light of the children's best interests, and thus precluded any summary denial of the petition. This assertion is unsupported by any authority and we reject it.

Moreover, Father's contention is not supported by the record. What it reflects is that SSA asked the court to make findings under section 361.3 solely with respect to denying placement with Aunt and Uncle, not the grandparents. It was Father's counsel, not SSA, who chimed in with a request to expand the findings to include the grandparents as well. The court implicitly declined to do so however, and made its findings with specific reference to its denial of placement with Aunt and Uncle only. There is simply no basis to conclude from that record that either SSA or the court placed the statute "at issue" in such a way as might obligate either to give it further consideration in connection with the petition seeking placement with the grandparents.

Finally, we note that the court's stated reason for denying placement with relatives was not, in any event, based on a perceived deficiency or lack of suitability in their homes. Instead, it was based solely on the fact that Aaron and Leah had already been residing with Patricia and Edgar G. for approximately seven months, and had formed a significant bond with them. Thus, the court concluded that maintaining the children in that existing placement satisfied their "real need for some permanence." To spin that finding into a requirement that the court delay the needed permanence while assessing the suitability of a different home is simply a non sequitur.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.