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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

In re Michael H. et al., Persons Coming  
Under the Juvenile Court Law.

B234163  
(Los Angeles County  
Super. Ct. No. CK79071)

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MICHAEL H.,

Minor and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Stanley Genser, Juvenile Court Referee. Affirmed.

Marissa Coffey for Minor and Appellant Michael H.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

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Appellant Michael H. and his three younger siblings became juvenile dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (g).<sup>1</sup> Following their removal from parental custody and an unsuccessful placement with their maternal grandmother, the two older children were placed in one foster home and the two younger children were placed in a separate foster home. Prior to the permanency planning hearing (§ 366.26), Michael filed a section 388 petition seeking a continuance of the hearing until the Los Angeles County Department of Children and Family Services (“DCFS”) could demonstrate that it made diligent efforts to place the siblings together in accordance with section 16002. The juvenile court denied the section 388 petition, terminated parental rights, and ordered adoption as the permanent plan for the two younger children. On appeal, Michael argues that the juvenile court erred in denying his petition because the DCFS failed to make diligent efforts to place the siblings together, and because a joint placement was in the best interest of each sibling. We conclude that the juvenile court acted within its discretion in denying Michael’s section 388 petition, and accordingly, affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Michael’s family has a long history with the DCFS. His mother, Christina G. (Mother), has four children: Michael (age 14), Sebastian L. (age 9), Mia C. (age 3) and Oscar C. (age 2). Michael and Sebastian each have different fathers, and Mia and Oscar share the same father, Oscar C. Sr. The current matter came to the attention of the DCFS in September 2009 when Mother and the youngest child, Oscar, tested positive for amphetamines at Oscar’s birth. At that time, the fathers of Michael and Sebastian were both incarcerated in state prison. The father of Mia and Oscar had a separate residence with their paternal grandmother, but often stayed in the home of Mother and the children.

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All further statutory references are to the Welfare and Institutions Code.

On September 18, 2009, following an initial investigation, the DCFS detained all four children and placed them in foster care through the same foster family agency. Michael and Sebastian were placed together in one foster home, and Mia and Oscar were placed together in a separate foster home. The DCFS thereafter filed a section 300 petition on behalf of the children, alleging substance abuse and domestic violence between Mother and the father of Mia and Oscar, and a failure to provide support by the fathers of Michael and Sebastian. On September 23, 2009, the juvenile court found a prima facie case for detention under section 300 and ordered that all four children remain detained. The court also ordered the DCFS to conduct pre-release investigations on Oscar C. Sr., the father of Mia and Oscar, and Leslie M., the godmother of Michael and Sebastian, for possible placement of the children.

On September 30, 2009, the DCFS submitted its pre-release investigation reports on both Oscar C. Sr. and Leslie M. The DCFS recommended against placement of the children with either individual pending further investigation. With respect to Oscar C. Sr., the DCFS explained that he had an extensive criminal and juvenile record, including substantiated allegations of sexual abuse against a minor sibling. With respect to Leslie M., the DCFS noted that she had a prior arrest for domestic violence and prior conviction for driving under the influence, and appeared to have unresolved issues with alcohol abuse and the criminal court system. Leslie M. also indicated that she was only interested in having Michael and Sebastian placed with her. On September 30, 2009, the juvenile court ordered that the children remain in foster care and the DCFS continue assessing any other appropriate relative for suitable placement.

On November 2, 2009, the DCFS submitted its jurisdiction and disposition report. As of that date, all four children remained in foster care with Michael and Sebastian still residing separately from Mia and Oscar. The DCFS reported that, during the month of October 2009, it had consulted with the children's maternal grandmother and one of the paternal grandmothers about possible placement. The paternal grandmother of Mia and Oscar declined consideration because her apartment was too small to accommodate all four children and she was unwilling to ask the father of Mia and Oscar to move out. The

children's maternal grandmother initially declined consideration, but later indicated that she would be willing to have the children placed with her provided she could move into Mother's Section 8 housing.

At the jurisdiction and disposition hearings, the juvenile court sustained an amended section 300 petition as to Mother, the father of Michael, and the father of Mia and Oscar. The court specifically found true the allegations that Mother had a history of substance abuse, including a positive test for amphetamines at Oscar's birth, that Mother and Mia and Oscar's father had a history of domestic violence, and that Michael's father had failed to provide support for his child.<sup>2</sup> The court declared all four children to be dependents of the court pursuant to section 300, subdivisions (b) and (g), and ordered that they be suitably placed by the DCFS. The court granted family reunification services to Mother, Sebastian's father, and Mia and Oscar's father, but denied reunification services to Michael's father. The court also ordered regular sibling visitation for the children.

On November 24, 2009, Michael and Sebastian were placed with their maternal grandmother. As of that date, the maternal grandmother was still working on securing a larger apartment so that she could also assume the care of Mia and Oscar. On December 9, 2009, the DCFS held a team decision making meeting with the family to develop a placement plan for all four children. The meeting was attended by Mother, Michael, Sebastian, the maternal grandmother, the paternal grandmother of Sebastian, and the paternal grandmother of Mia and Oscar. The paternal grandmother of Sebastian declined consideration for placement after Mother raised allegations of prior physical abuse in the paternal grandmother's home. The paternal grandmother of Mia and Oscar, who previously had declined consideration for placement, indicated that she now wanted the two younger children placed with her, and the DCFS agreed to initiate an assessment of her home. It was also agreed that all four children would benefit from being placed

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The court dismissed the failure to support allegation as to Sebastian's father.

together with the maternal grandmother, and that the DCFS would attempt to secure financial assistance for the maternal grandmother to move into a larger home.

In December 2009, while awaiting further housing information from the maternal grandmother, the DCFS conducted a pre-release investigation on the paternal grandmother of Mia and Oscar. Following its investigation, the DCFS recommended against placement of Mia and Oscar with their paternal grandmother due to her extensive history with the DCFS, including substantiated allegations of sexual abuse in her home. At a March 2010 progress review hearing, both the DCFS and counsel for the children argued that it was in the best interests of Mia and Oscar to be placed with their maternal grandmother, and the juvenile court agreed that all four children should be placed together if possible. In early March 2010, the DCFS provided \$3,600 in funds through the Supportive and Therapeutic Options Program (STOP) to assist the maternal grandmother in moving into a home that could accommodate all four children. On March 8, 2010, the DCFS approved the maternal grandmother for the placement of all four children, and Mia and Oscar joined their siblings in her home on March 12, 2010.

On March 17, 2010, Mother reported to the DCFS that she and the maternal grandmother had a physical altercation and requested that the children be removed from her home. The DCFS contacted the maternal grandmother who confirmed that she had an altercation with Mother in Oscar's presence. The maternal grandmother also stated that she was not sure if she wanted to continue caring for the children. On March 26, 2010, the DCFS held a team decision making meeting with the family to develop a safety plan that would permit the children to remain in the maternal grandmother's home. It was agreed that Mother would have her monitored visits with the children outside the maternal grandmother's home, and that the maternal grandmother would participate in domestic violence classes and individual counseling. The court thereafter ordered that all visitation with the children was to occur at the offices of the DCFS.

On May 6, 2010, the juvenile court held a contested six-month review hearing. The DCFS reported that neither Mother nor the father of Mia and Oscar were complying with their court-ordered case plan or having regular visitation with the children. The

court terminated family reunification services for both Mother and the father of Mia and Oscar, and set a permanency planning hearing for Michael, Mia, and Oscar for September 2, 2010. The court granted continued family reunification services to Sebastian's father, who was still incarcerated, and set a 12-month review hearing for Sebastian for the same date. In June 2010, Sebastian's father was released from prison and began having regular monitored visitation with the child. The DCFS reported that the visits were going well and that Sebastian was beginning to build a relationship with his father.

Prior to the permanency planning hearing, the DCFS continued to monitor the children's progress in the maternal grandmother's home. Both Michael and Sebastian reported that they were comfortable residing with the maternal grandmother, and all four children appeared to be thriving in her care. During visits to the home, the case social worker observed Michael helping Sebastian with his homework and playing well with Mia and Oscar. The maternal grandmother initially stated that she was interested in pursuing guardianship or adoption of all four children because she believed she could provide them with a stable and permanent home. However, in August 2010, the DCFS became concerned about her commitment to a permanent plan for the children. Although the majority of the family preservation services were being provided in her home, the maternal grandmother began cancelling her counseling sessions because she was too busy. She also complained that the DCFS was placing too many demands on her time, telling one investigator: "The situation is that this is too much for me. I am being frank with you. I am telling you how I feel. This is a lot of pressure. I give the [DCFS] workers too much of my time. It is a lot for me." When informed that Oscar might need early intervention services through a regional center, the maternal grandmother made it clear that she would not take time off from work to ensure that Oscar was receiving the necessary services. She further admitted that she had not been forthcoming with the DCFS when she said that Mother had not been visiting the children, and that she had been allowing Mother to have weekly visits with the children in her home. Additionally, the maternal grandmother told her therapist that she was considering visiting her native

country of Guatemala for a few months to participate in cultural festivities, and that there were other family members who could care for the children in her absence. Given these concerns about the maternal grandmother, the DCFS decided to further assess her commitment to caring for the children while also considering other permanent placement options.

On August 30, 2010, the maternal grandmother informed the DCFS that she wanted the children removed from her home. She explained that Mother had engaged in an altercation with Mother's 18-year-old brother who also resided in the home. The maternal grandmother stated that she did not want to risk her son going to jail as a result of Mother's behavior, but she could not keep Mother from coming into her home as long as the children were staying there. She also admitted that she was overwhelmed with the care of all four children, and she would prefer that Michael be placed with her and the three younger children be placed with their paternal grandmothers. Mother confirmed that she had been having daily contact with the children at the maternal grandmother's home in direct violation of the court's order, and that she had taken the children on an unsupervised outing for Sebastian's birthday without the approval of the DCFS.

On August 30, 2010, the DCFS removed all four children from the maternal grandmother's home and returned them to foster care through the same foster family agency. Michael and Sebastian were once again placed in one foster home, and Mia and Oscar were placed in a separate foster home. The DCFS thereafter filed a section 387 supplemental petition on the grounds that the maternal grandmother had allowed Mother to have regular unmonitored contact with the children in violation of the court's visitation order, and that the maternal grandmother was unwilling to continue caring for the children and had requested their removal from her home. In light of these developments, the DCFS recommended that the permanency planning hearing be continued so that the agency could identify and implement an alternative permanent plan for the children. On September 2, 2010, the juvenile court sustained the section 387 petition, continued the permanency planning hearing for Michael, Mia, and Oscar, and set a permanency review hearing for Sebastian. The court also granted Mother's request that the DCFS reassess

Leslie M., the godmother of Michael and Sebastian, for the possible placement of the children.

On October 29, 2010, the DCFS placed Mia, then age 2, and Oscar, then age 1, in the foster home of Mr. and Mrs. G. As of that date, Michael and Sebastian remained in a separate foster home while the DCFS continued to assess Leslie M. for suitable placement of all four children. In its December 2010 status report, the DCFS stated that the G.'s were committed to adopting both Mia and Oscar and had demonstrated a willingness and ability to meet the children's needs. Both Mia and Oscar appeared to be very attached to the G.'s, were affectionate with them, and would turn to them for comfort and support. The G.'s had wanted to be parents for many years and felt that Mia and Oscar fit beautifully into their family. The DCFS recommended that parental rights be terminated as to Mia and Oscar and that adoption be ordered as their permanent plan. On December 2, 2010, the juvenile court set the matter for a contested permanency planning hearing for Michael, Mia, and Oscar, and a continued permanency review hearing for Sebastian.

On December 10, 2010, Sebastian was placed with his father in his paternal grandmother's home. Michael remained in the same foster home until January 4, 2011, when he was moved to a group home at his request because he wanted to be with children his own age. During a January 11, 2011 team decision making meeting about Michael's placement, Michael indicated that he wished to remain in the group home if he could not be placed with his godmother, Leslie M. In its January 2011 progress report, the DCFS informed the court that Leslie's home had not been approved for suitable placement "due to numerous problems with live scan results." The DCFS also became concerned that another person might be staying in the home after an unidentified man claiming to be Leslie's husband answered her cell phone.<sup>3</sup> With respect to Michael's siblings, the DCFS

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<sup>3</sup> It was later determined that the unidentified man was Leslie's cousin who jokingly identified himself as her husband.



reported that Sebastian was content in his placement with his father, and that Mia and Oscar were continuing to thrive in their prospective adoptive home.

On January 18, 2011, the juvenile court granted the request of the children's counsel to be relieved from representation due to a conflict of interest. The court appointed one attorney for Michael and Sebastian, and one attorney for Mia and Oscar. On January 26, 2011, new counsel for Michael and Sebastian filed a section 388 petition on her clients' behalf requesting standing to assert a sibling relationship at the permanency planning hearing. Counsel specifically asked that the permanency planning hearing be continued so that the DCFS could comply with section 16002 by explaining why the children had been placed in different homes, and what efforts it had made to place them together and to ensure sibling visitation. Counsel also requested that the DCFS be required to facilitate a post-adoption contract for sibling visitation in the event that adoption was ordered as the permanent plan for Mia and Oscar. On January 27, 2011, the juvenile court continued the permanency planning hearing pending the DCFS's response to the section 388 petition and further investigation of Leslie M. for possible placement of the children. The court also ordered weekly sibling visitation for all four children.

In its written response to the section 388 petition, the DCFS explained that, at the start of the dependency proceedings, it had made diligent efforts to place all four children together in the maternal grandmother's home. The DCFS had to abruptly remove them from the home due to the maternal grandmother's lack of appropriate supervision and refusal to provide them with ongoing care. The DCFS then had to place the children in two separate foster homes based on their age difference and lack of available space, but attempted to facilitate sibling contact by placing them through the same foster family agency. While Michael and Sebastian were clear that they did not want to be adopted, it was the DCFS's policy to pursue a concurrent plan of adoption for Mia and Oscar based on their ages. The DCFS had advised the foster family agency that sibling visitation was required, but it often had difficulty arranging visits due to various scheduling conflicts. As of February 2011, however, the DCFS had set up a weekly visitation schedule in

which the children would meet at a park every Saturday with their respective caretakers monitoring the visits. In addition, the DCFS had spoken with the prospective adoptive parents of Mia and Oscar about continuing sibling visits, and they had indicated a willingness to sign a post-adoption visitation contract because they recognized the importance of maintaining the sibling relationship.

In its February and March 2011 status reports, the DCFS informed the court that Leslie M.'s home still had not been approved for suitable placement of the children. Because both Leslie and her mother had criminal records, the DCFS needed to obtain criminal exemption waivers for each of them, but had not received the required documentation from either Leslie or her mother. The DCFS also reported that Leslie's elderly bedridden grandmother who resided in the home could not be properly live scanned and that a manual background check on her was necessary. In its April 2011 report, the DCFS explained that the criminal exemption waiver for Leslie had been denied pending receipt of additional information about her prior convictions. The DCFS further stated that it had spoken with the prospective adoptive parents of Mia and Oscar about the possibility of overnight visits for Michael, but they did not feel comfortable with such visits. On April 12, 2011, the juvenile court set the matter for a contested section 388 petition hearing and a contested section 366.26 permanency planning hearing to be held on May 25, 2011.

In its May 2011 status report, the DCFS advised the court that criminal exemption waivers for both Leslie M. and her mother had been approved on May 9, 2011. However, on May 10, 2011, Leslie informed the DCFS that she had been forced to move out of her home because her landlord lost the building and that she had temporarily relocated to the home of a relative. As a result, the DCFS could not recommend placement of the children with Leslie until she had obtained new housing which the agency would then have to review. The DCFS was also concerned about Leslie's lack of communication, as she had received a 30-day notice to vacate her residence, but had failed to notify the DCFS of her changed circumstances until the last day.

In May 2011, Michael asked to return to the maternal grandmother's home, and the DCFS was ordered to reassess the maternal grandmother for possible placement. During a May 17, 2011 interview with the DCFS, the maternal grandmother stated that she was interested in having Michael placed with her again because she wanted him to have a stable home, but she knew that she was unable to care for Mia and Oscar. The DCFS accordingly initiated a new investigation of the maternal grandmother's home. The DCFS further reported that Sebastian was thriving in his father's home, and recommended that the court terminate jurisdiction over him and grant full physical and legal custody to his father. The DCFS continued to recommend that parental rights be terminated as to Mia and Oscar and adoption be ordered as their permanent plan.

On May 25, 2011, juvenile court began hearing testimony on the contested section 388 petition and the contested section 366.26 permanency planning hearing. In support of the petition, Michael testified that he had lived with Mia and Oscar in the maternal grandmother's home for six months. Since the children's removal from the maternal grandmother's home in August 2010, Michael had attended five visits with his siblings. During those visits, he played with Mia and Oscar in the park and shared ice cream with them. Recently, Michael had not been attending the scheduled Saturday visits with his siblings because he was visiting Mother and the maternal grandmother on alternating Saturdays. Michael had not told his case social worker that he had stopped attending the sibling visits until the day before his testimony. Prior to Mia and Oscar being placed with Michael and Sebastian in the maternal grandmother's home, Michael had asked the case social worker on one occasion whether his younger siblings could come to live with him. After the children were removed from the maternal grandmother's home, Michael never asked the case social worker about the possibility of being reunited with Mia and Oscar because it was his understanding that the DCFS was pursuing adoption for both of them. It was also Michael's understanding that he had not been placed with Mia and Oscar in the same foster home due to their difference in age. Michael testified that it would be hard for him if Mia and Oscar were adopted. He also stated that he would like

to live with his younger siblings, but he “would rather want to live [with] at least [a] family member.”

The case social worker testified that, after the children were removed from the maternal grandmother’s home in August 2010, she searched for a foster care placement that could accommodate all four children. She contacted two foster family agencies multiple times to inquire about a joint placement for the children. She stopped contacting the foster family agencies about a joint foster care placement when Mia and Oscar were placed with their prospective adoptive parents in October 2010. However, she never stopped searching for alternative placements that could accommodate all four children. With respect to the sibling visits, the case social worker testified that she spoke with Michael about his reasons for not attending the visits and that he responded that he had wanted to see the maternal grandmother. The case social worker then explained to the maternal grandmother that she had to ensure that Michael attended the sibling visits if he was placed back with her. The maternal grandmother indicated that she could not take Michael to the visits because she worked a lot. The case social worker also spoke with Michael’s group home about his missed sibling visits and was told that Michael had said he did not want to attend. When the case social worker last spoke with Michael about the prospect of adoption for Mia and Oscar, Michael was visibly upset, but stated that he understood if it happened.

Mr. G., the prospective adoptive parent of Mia and Oscar, testified that Michael had attended five sibling visits since Mia and Oscar were placed with the G.’s. Mr. G. observed that Michael was often quiet during the visits and seemed reluctant to interact with his younger siblings. According to Mr. G., Michael spent most of the time playing with Sebastian and had to be directed to play with Mia and Oscar.

Mother testified that she was attending weekly monitored visits with Mia and Oscar at the DCFS’s offices. She stated that the children were always excited to see her at the start of the visits, but acknowledged that they were also excited at the end of the visits when they were picked up by their prospective adoptive father whom they called “Poppy.” Mother did not agree with the adoption of Mia or Oscar. She was not ready to

assume their care but wanted them placed with a relative so that she could still be a part of their lives. Mother had spoken with the maternal grandmother about having the children placed with her, but the maternal grandmother was only able to care for Michael. Mother also had proposed that the children be placed with Leslie M., but admitted that Leslie had no contact with Mia or Oscar in the last six months. At the close of testimony, the juvenile court continued the matter for argument on June 13, 2011.

On June 3, 2011, while the section 388 petition was still pending, the juvenile court terminated its dependency jurisdiction over Sebastian and granted full physical and legal custody of the child to his father. The court's exit order provided that Sebastian would have sibling visits with Michael every other weekend. On June 10, 2011, the DCFS placed Michael with the maternal grandmother. At that time, the maternal grandmother informed the DCFS that she was now willing to have Mia and Oscar placed with her as well, and that she was planning on moving into a larger apartment that could accommodate all three children. The DCFS noted that the maternal grandmother had only recently declined placement of Mia and Oscar and that her circumstances had not changed. The DCFS was concerned that she would again become overwhelmed with caring for the two younger children and request that they be removed from her home.

On June 13, 2011, the juvenile court heard argument on the section 388 petition. Michael's counsel contended that the DCFS had failed to comply with section 16002 because it had not made diligent efforts to place the children together, nor had it shown that such a placement was contrary to their safety and well-being. Michael's counsel requested that the court continue the permanency planning hearing, and order the DCFS to diligently investigate whether Michael, Mia, and Oscar could be safely placed back in the maternal grandmother's home. Mother's counsel joined in the request for a continuance to reassess whether the children could be suitably placed with the maternal grandmother. Counsel for Mia and Oscar and counsel for the DCFS asked the court to deny the section 388 petition, terminate parental rights, and order that Mia and Oscar be placed for adoption. Counsel for the DCFS specifically argued that the agency had made diligent efforts to place all four children with the maternal grandmother early in the

dependency proceedings, and following their necessary removal from the maternal grandmother's home, the DCFS continued its efforts to place the children together either in a joint foster care placement or with Leslie M. Counsel for the DCFS also asserted that it was not appropriate to place Mia and Oscar with the maternal grandmother because the evidence established that she was unable to properly care for them or to protect them from Mother. Counsel for the DCFS further noted that Mia and Oscar's prospective adoptive parents were committed to facilitating sibling visitation with Michael through a post-adoption visitation contract.

The juvenile court denied the section 388 petition, finding that the DCFS had made diligent efforts to place the children together while also fulfilling its duty to provide concurrent planning for Mia and Oscar. The court also found that, while Michael had a desire to maintain the sibling group, there was a significant age difference between Michael and his two youngest siblings, and Michael had not demonstrated a strong attachment to them. The court further found that it was in the best interests of Mia and Oscar to achieve permanency through adoption. Turning to the permanency planning hearing, the court found by clear and convincing evidence that both Mia and Oscar were adoptable, and that there was no evidence to demonstrate that the termination of parental rights would be detrimental to either child. The court terminated parental rights as to Mia and Oscar and ordered adoption as the permanent plan for both children. The court also ordered a planned permanent living arrangement for Michael with directions to the DCFS to explore the prospect of legal guardianship with the maternal grandmother.

Michael has filed a timely notice of appeal.

## **DISCUSSION**

In his appeal, Michael challenges the juvenile court's denial of his section 388 petition. He specifically argues that the court erred in finding that the DCFS had made diligent efforts to place the siblings together following their removal from the maternal grandmother's home, as required by section 16002. He also asserts that the court erred in finding that a permanent plan of adoption for Mia and Oscar, rather than a joint

placement with Michael, was in the children’s best interests. We conclude that the juvenile court did not abuse its discretion.

## **I. Applicable legal principles**

In juvenile dependency proceedings, when family reunification efforts fail, “the court must terminate reunification efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan.” (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249.) For the juvenile court to implement adoption as the permanent plan, it must find, by clear and convincing evidence, that the child is likely to be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) Then, in the absence of evidence that a relative guardianship should be considered (§ 366.26, subd. (c)(1)(A)) or that termination of parental rights would be detrimental to the child under one of six statutorily-specified exceptions (§ 366.26, subd. (c)(1)(B)(i)-(vi)), the court “shall terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1).)

One of the statutory exceptions to the termination of parental rights is the “sibling relationship exception.” (*In re Celine R.* (2003) 31 Cal.4th 45, 52-54.) Under section 366.26, subdivision (c)(1)(B)(v), the juvenile court must “determine whether terminating parental rights would substantially interfere with the sibling relationship by evaluating the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption. [Citation.]” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-952.) “When considering the sibling relationship exception, the concern is the best interests of the child being considered for adoption, not the interests of that child’s siblings.” (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822.) “[T]he court may reject adoption under this 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.” (*In re Celine R.*, *supra*, at pp. 49-50.)

While a parent whose parental rights may be terminated has standing to assert the sibling relationship exception, “[s]iblings who are not the subject of the termination hearing, even if they are also the subject of the dependency proceedings, have no such automatic right. [Citation.]” (*In re Hector A.* (2005) 125 Cal.App.4th 783, 791, fn. omitted.) Rather, a nonadoptive sibling seeking to assert the exception at the permanency planning hearing must properly petition the juvenile court under section 388, subdivision (b).<sup>4</sup> (*Id.* at p. 792; *In re E.S.* (2011) 196 Cal.App.4th 1329, 1335-1336.) The petitioning sibling “must demonstrate that the proposed order or request would be in the best interests of the dependent child or children *with whom the petitioning nonadoptive child desires to assert a relationship or placement . . .*” (*In re E.S.*, *supra*, at p. 1338.) A petition under section 388 “is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.” (*In re Hector A.*, *supra*, at p. 798, quoting *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

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<sup>4</sup> Section 388, subdivision (b) provides: “Any person, including a child who is a dependent of the juvenile court, may petition the court to assert a relationship as a sibling related by blood, adoption, or affinity through a common legal or biological parent to a child who is, or is the subject of a petition for adjudication as, a dependent of the juvenile court, and may request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child or make any other request for an order which may be shown to be in the best interest of the dependent child. . . . The petition shall be verified and shall set forth the following: [¶] (1) Through which parent he or she is related to the dependent child. [¶] (2) Whether he or she is related to the dependent child by blood, adoption, or affinity. [¶] (3) The request or order that the petitioner is seeking. [¶] (4) Why that request or order is in the best interest of the dependent child.”



## **II. The juvenile court did not err in finding that the DCFS made diligent efforts to place the children together.**

Michael contends that the juvenile court should have granted his section 388 petition because the DCFS failed to comply with section 16002 by making diligent efforts to place Michael, Mia, and Oscar together. We disagree.

Section 16002 states that it is the Legislature's intent to preserve and strengthen the family unit by "ensuring that when siblings have been removed from their home . . . , the siblings will be placed in foster care together, unless it has been determined that placement together is contrary to the safety or well-being of any sibling." (§ 16002, subd. (a).) To effectuate this intent, the responsible agency "shall make a diligent effort in all out-of-home placements of dependent children, including those with relatives, to place siblings together in the same placement, and to develop and maintain sibling relationships. If siblings are not placed together in the same home, the social worker shall explain why the siblings are not placed together and what efforts he or she is making to place the siblings together or why making those efforts would be contrary to the safety and well-being of any of the siblings." (§ 16002, subd. (b).) Additionally, "[w]hen placement of siblings together in the same home is not possible, a diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child." (§ 16002, subd. (b).) The statute sets forth a legislative goal of placing siblings together, but does not create a mandatory duty to do so. (*County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 642 ["[P]lacement with siblings is a legislative goal that does not create a mandatory duty. It is a factor to be considered in making the discretionary foster care placement."].)

Michael reasons that the DCFS was required by section 16002 to place the children together following their removal from the maternal grandmother's home because the agency failed to demonstrate that a joint sibling placement was contrary to their safety and well-being. However, the statute does not provide that either the DCFS or the

juvenile court must place every dependent child with his or her siblings absent a finding that such placement is contrary to the safety or well-being of the child. Rather, it requires the DCFS to “make a diligent effort” to place siblings together, and only if such efforts are not made, to explain “why making those efforts would be contrary to the safety and well-being of any of the siblings.” (§ 16002, subd. (b).) Here, the evidence establishes that diligent efforts were made.

Early in the dependency proceedings, the DCFS acted diligently to find a placement for all four children with a relative or a nonrelated extended family member. The DCFS promptly conducted pre-release investigations of Oscar C. Sr., the father of Mia and Oscar, and Leslie M., the godmother of Michael and Sebastian. When neither Oscar C. Sr. nor Leslie M. could be approved for placement without further investigation into their criminal records, the DCFS held a team decision making meeting with the children’s maternal grandmother and paternal grandmothers to assess whether all four siblings could be placed with any of them. Although the maternal grandmother initially declined consideration for placement, the DCFS assisted her by providing funds so that she could move into a larger home that would accommodate all four children. Within days after Mia and Oscar were placed with the maternal grandmother, she asked that they be removed from her home due to a conflict with Mother, but instead of placing the children back in foster care, the DCFS devised a safety plan that allowed them to remain in her home. The DCFS also provided the maternal grandmother with family preservation services, but she declined to fully participate in such services.

When the children were later removed from the maternal grandmother’s home at her request, the DCFS continued to make efforts to place them together. The case social worker contacted two foster family agencies on multiple occasions in search of a foster care placement that could accommodate all four siblings. Her search was unsuccessful, however, due to the large age difference between the children and lack of available space. Although the case social worker stopped contacting these foster family agencies after Mia and Oscar were placed in their prospective adoptive home on October 29, 2010, she

testified that she never stopped searching for an alternative joint placement for the children.

Indeed, the record reflects that, on October 19, 2010, the DCFS initiated another pre-release investigation of Leslie M. for suitable placement of all four children. The assessment of Leslie's home took time due to the need to conduct a thorough criminal background check on each of the home's occupants, including obtaining criminal exemption waivers for both Leslie and her mother. Leslie's home was finally approved for placement of the children in May 2011; however, shortly before the permanency planning hearing, Leslie informed the DCFS that she had been evicted from her home and had to temporarily relocate to the home of a relative. Therefore, as of the permanency planning hearing date, the DCFS could not approve Leslie for placement of any of the children until it had assessed her new home for suitability.

In the meantime, Mia and Oscar had been living with their prospective adoptive parents, Mr. and Mrs. G., for six months. Both children were very attached to the G.'s and well-adjusted in their home, and the G.'s were committed to making the children a permanent part of their family. While section 16002 evinces a legislative goal of placing siblings together, it does not mandate such placement at the expense of permanency for a dependent child. Under these circumstances, the juvenile court properly found that the DCFS had made diligent efforts to place Michael, Mia, and Oscar together in compliance with section 16002.

### **III. The juvenile court did not err in finding that a permanent plan of adoption was in the best interests of Mia and Oscar.**

Michael also argues that the juvenile court should have granted his section 388 petition because finding a home where Michael, Mia, and Oscar could be placed together was in the best interests of all three siblings. However, granting Michael the requested relief would have required yet another continuance of the permanency planning hearing, thus delaying resolution of a permanent placement for Mia and Oscar. While fostering sibling relationships is a desirable goal when children are removed from parental custody,

that goal must be considered in the context of the overarching preference for permanency and stability for each dependent child. In this case, the juvenile court properly found that further delaying permanency for Mia and Oscar in the hope of finding a joint placement with Michael was not in Mia's or Oscar's best interest.

Both Mia and Oscar were very young when they were separated from their older siblings. At the time of their removal from the maternal grandmother and placement with the G.'s, Mia was only two years old and Oscar was only one year old. Although the DCFS recommended the termination of parental rights and adoption for Mia and Oscar in December 2010, the juvenile court delayed the permanency planning hearing for another six months while additional efforts were made to place the children with Michael. During that time, Mia and Oscar continued to thrive in the home of their prospective adoptive parents. The children had become deeply bonded with the G.'s and the G.'s were devoted to providing them with a stable and loving home. As of the permanency planning hearing date, the only prospect for a joint sibling placement with Michael would be placement with the maternal grandmother or Leslie M. However, the record reflects that neither of these prospective placements was in the best interests of Mia and Oscar.

During the dependency proceedings, the maternal grandmother had demonstrated that she was either unwilling or unable to protect Mia and Oscar from the risk of harm posed by Mother. She had allowed Mother to have regular unmonitored contact with the children while they were under her care and had been involved in a physical altercation with Mother in Oscar's presence. The maternal grandmother also had shown a lack of commitment to caring for Mia and Oscar on a long-term basis. On two occasions, she had requested that the children be removed from her home in part because she was overwhelmed with their care. Less than two weeks before the permanency planning hearing, the maternal grandmother told the DCFS that she was only interested in having Michael placed back with her and that she knew she was unable to properly care for Mia and Oscar. Although the maternal grandmother told the DCFS a few days before the court's ruling that she now wanted Mia and Oscar placed with her as well, none of the circumstances that had led to the prior removal of the children from her home had

changed. During his testimony on the section 388 petition, even Michael admitted that the maternal grandmother could not care for all three children at that time because “it was too much for her.”

Likewise, the evidence presented at the section 388 hearing did not support the placement of Mia and Oscar with Leslie M. Notwithstanding extensive efforts by the DCFS, Leslie’s home had not been approved for placement of any of the children at the time of the hearing. The DCFS also had concerns about the suitability of placing the children with Leslie in light of her failure to timely notify the DCFS of the loss of her home while the assessment was still pending. Additionally, although Leslie had a prior caretaker relationship with Michael, she had never provided care for Mia or Oscar, nor had any contact with them in the last six months. The only other option for a joint sibling placement was to continue searching for a foster care home that could accommodate the sibling group. However, Michael himself was not in favor of that option, as he testified that while he would like to live with Mia and Oscar, his stronger preference was to be placed with a family member rather than in foster care.

Finally, the adoption of Mia and Oscar does not preclude Michael from maintaining a sibling relationship with them. The record reflects that the prospective adoptive parents of Mia and Oscar were committed to fostering a sibling relationship between the children. Prior to the termination of parental rights, the G.’s consistently took Mia and Oscar to their weekly sibling visits. The G.’s also agreed to enter into a post-adoption visitation contract to ensure that Mia and Oscar would maintain contact with their older siblings. Michael’s desire to preserve the sibling relationship through a suitable joint placement is commendable and demonstrates his commitment to his two younger siblings. However, granting Michael’s petition to further continue the permanency planning hearing in the hope of placing the siblings together would have deprived Mia and Oscar of a stable and permanent home. The juvenile court accordingly did not abuse its discretion in denying the section 388 petition and selecting adoption as the permanent plan for Mia and Oscar.

## **DISPOSITION**

The order of the juvenile court denying the section 388 petition filed on behalf of Michael H. is affirmed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.