Filed 2/14/17 In re A.W. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re A.W. et al., Persons Coming Under the Juvenile Court Law.	B268189 (Los Angeles County Super. Ct. No. CK84800)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. SHEREE J., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent the Los Angeles County Department of Children and Family Services.

Linda S. Rehm, under appointment by the Court of Appeal, for Plaintiffs and Respondents A. W. and Jordyn C.

Sheree J. appeals the juvenile court's order granting the petition of her grandchildren, A.W. and Jordyn C., pursuant to Welfare and Institutions Code section 388,[1] to remove Sheree as their legal guardian after Sheree was convicted of drunk driving and child endangerment. Sheree contends the court was required to hold a hearing pursuant to section 387 and find she posed a danger to her grandchildren before it could terminate her guardianship and remove the children from her custody. She also contends, if no such hearing was statutorily required in these circumstances, she was treated as a dependency guardian differently from a parent in violation of her right to equal protection. Finally, Sheree asserts there was insufficient evidence to support the court's finding that removing her as legal guardian was in the children's best interest. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Sheree's Appointment as A.W. and Jordyn's Legal Guardian in 2012 Following Initiation of Dependency Proceedings and the Failure of Reunification*

In October 2010 the Los Angeles County Department of Children and Family Services (Department) filed a petition pursuant to section 300 alleging, among other things, Rochelle B., mother of then four-year-old A.W. and eight-month-old Jordyn, had engaged in a violent altercation with their presumed father, Renardo C., that had endangered the children and put them at a

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[1] Statutory references are to this code unless otherwise stated.

continuing and substantial risk of harm. The court sustained that allegation as to Renardo, found Rochelle nonoffending, declared A.W. and Jordyn dependent children of the court and released them to Rochelle's sole custody with family maintenance services. The court ordered reunification services and monitored visitation for Renardo.

In March 2011 the Department filed a section 387 petition to remove the children from Rochelle's custody after Rochelle had left them alone with Renardo in violation of the court's orders. The court sustained the new allegation, removed the children from Rochelle and ultimately placed them with Sheree, their maternal grandmother.

In December 2011 at the six-month review hearing (§ 366.21, subd. (e)), the court terminated reunification services for both parents and set the matter for a selection and implementation hearing (§ 366.26). At the July 31, 2012 selection and implementation hearing, the court appointed Sheree legal guardian of A.W. and Jordyn, issued letters of guardianship to that effect and terminated jurisdiction with financial assistance to Sheree under the Kin-GAP program.

2. *Sheree's Criminal Conduct and Renewed Dependency Proceedings*

On July 3, 2014 Sheree drove dangerously and erratically while A.W., Jordyn and Sheree's two minor children, A.B. and I.B., were in the car. The children told social workers Sheree had been drinking before she got in the car and while she had been driving and had acted "crazy": She drove at a high rate of speed, swerved in and out of lanes and nearly crashed the car. They were frightened. After stopping the car, Sheree was arrested and taken into custody. Immediately following Sheree's arrest,

Sheree's adult son took all four children to live with Sheree's adult daughter, Lashanae B.

On July 21, 2015 Sheree pleaded no contest to misdemeanor counts of driving a vehicle while having a blood alcohol level equal to or greater than .08 percent (Veh. Code, § 23152, subd. (b)) and child endangerment (Pen. Code, § 273a, subd. (b)). Sheree was placed on summary probation for 48 months with terms and conditions that included serving 90 days in county jail and completing a one-year alcohol abuse program and 52-week parenting program.

On July 27, 2015 the Department filed two dependency petitions based on Sheree's criminal conduct: (1) A supplemental petition pursuant to section 387, alleging Sheree's actions had put both A.W. and Jordyn at substantial risk of serious physical harm and (2) a section 300 petition alleging the same risk of harm as to Sheree's two children. Following detention hearings on both petitions, A.W., Jordyn, I.B. and A.B. were detained from Sheree and placed with Lashanae.

3. *The Court's Dismissal of the Section 300 Dependency Petition as to Sheree's Own Children*

On October 6, 2015 the court held the jurisdiction hearing for Sheree's children. The Department asserted, as it had in its jurisdiction/disposition report, that I.B. and A.B. were not safe in Sheree's custody and recommended their removal from Sheree with reunification services. I.B. and A.B. agreed. In addition, they requested the court amend the petition according to proof and sustain an allegation addressing Sheree's history of alcohol abuse, citing Lashanae's statements to social workers that she hoped this incident would make Sheree finally obtain the help she needed to address her long-term alcohol abuse problem.

(Lashanae had also told social workers Sheree had taken good care of the children and, to her knowledge, had not at any other time driven while intoxicated.)

Sheree denied any history of alcohol abuse and insisted the drunk-driving incident was a one-time occurrence for which she felt great remorse. She accepted responsibility for her behavior and intended to do whatever was necessary so that her children (and grandchildren) could be returned to her. Sheree also presented evidence she had been diligent in attending her court-ordered alcohol abuse and parenting programs and had consistently tested negative for alcohol.

The court dismissed the section 300 petition, finding the Department had failed to demonstrate Sheree posed a current risk to her children. Although the court found Sheree's conduct and "poor judgment" had certainly endangered I.B. and A.B., it credited Sheree's statements that she now understood the danger her drunk driving had posed to her children and would not repeat the behavior. The court also found Lashanae's statement to social workers insufficient evidence that Sheree had a history of abusing alcohol.

4. *I.W. and Jordyn's Section 388 Petition To Remove Sheree as Their Legal Guardian*

On October 6, 2015, immediately following the jurisdiction hearing for Sheree's children and before the hearing on the Department's section 387 petition scheduled to be adjudicated the same day, A.W. and Jordyn filed a "walk on" section 388 petition to modify the juvenile court's 2012 order appointing Sheree their legal guardian. A.W. and Jordyn argued circumstances had changed—Sheree's criminal behavior had put their safety at risk—and they remained afraid to be in her custody. The

children alleged they were thriving in Lashanae's care and wished to remove Sheree as their guardian and make Lashanae, their maternal aunt, their new legal guardian. Lashanae informed social workers she would consent to be the legal guardian.

The court initially stated it would consider the Department's section 387 petition before addressing A.W. and Jordyn's section 388 petition. However, after an off-the-record colloquy with all counsel, the court, without objection, heard the children's section 388 petition first. Following argument, the court agreed the children had shown significant changed circumstances—Sheree's dangerous behavior, her criminal conviction and sentence of probation with conditions and the children's subsequent placement with Lashanae—and concluded it was in their best interest that Sheree be removed as guardian. The court rejected Sheree's argument that it could not remove her as guardian absent a finding that she posed a current danger: "[T]he standard before me is very different from the standard the court considered in the companion case in which the legal guardian was the mother of the children and the allegations were under Welfare and Institutions Code section 300. In that case, I found that there was no substantial risk of physical harm to the children and considered several factors that had been laid out in case law as relevant to that decision. Under a 388 petition, however, the standard is quite different. One, there has to be a change of circumstances, which I have definitely found here. We have had an accident which has ended—resulted, although in no physical injuries to the children, a criminal conviction by the legal guardian and several now court-ordered, court-mandated programs that [Sheree] must participate in. So there is clearly a

change in circumstances. And then the second is whether or not the granting of the petition is in the best interest of the children. I do believe that it is in the best interest of [A.W.] and Jordyn that legal guardianship be terminated. This was a very inappropriate event. [Sheree] exhibited very poor judgment. And I do believe that the children will be better off . . . not in the custody of the legal guardian. They are currently in the custody of their . . . maternal aunt and doing quite well. So I do believe under the standards appropriate for a section 388 petition, that it is—I do find by a preponderance of the evidence that it is in the best interest of the children that [Sheree's] legal guardianship be terminated."

5. *The Court's Dismissal of the Section 387 Petition as Moot*

Following its ruling granting A.W. and Jordyn's section 388 petition to remove Sheree as their legal guardian, the juvenile court dismissed the Department's section 387 petition to remove the children from Sheree's custody as moot. The court set a selection and implementation hearing under section 366.26 to identify a new permanent plan for A.W. and Jordyn with the objective of making their maternal aunt their new legal guardian.[2]

DISCUSSION

1. *Governing Law and Standard of Review*

A request to modify, replace or terminate a guardianship established by the juvenile court pursuant to section 360 or 366.26—a dependency guardianship—is governed by the procedures provided in section 388 for modification of court

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[2] Lashanae was appointed the children's legal guardian and dependency jurisdiction was terminated on November 16, 2016.

orders. (*B.B. v. Superior Court* (2016) 6 Cal.App.5th 563, 569; *In re Priscilla D.* (2015) 234 Cal.App.4th 1207, 1217-1218; *In re Carlos E.* (2005) 129 Cal.App.4th 1408, 1417; see Cal. Rules of Court, rule 5.740(c) ["[a] petition to terminate a guardianship established by the juvenile court, to appoint a successor guardian, or to modify or supplement orders concerning guardianship must be filed in juvenile court" using Judicial Council form JV-180 applicable to section 388 petitions]; cf. *In re Jessica C.* (2007) 151 Cal.App.4th 474, 480 [when Department seeks to terminate a dependency guardianship as the permanent plan for a dependent child and place the child in a more restrictive placement of foster care, Department must file a section 387 petition, not a section 388 petition].)

To prevail on a section 388 petition to modify or terminate a dependency guardianship, the petitioner must demonstrate by a preponderance of the evidence that new evidence or a change of circumstances exists that makes modification of the previous guardianship order in the dependent child's best interest. (§ 388, subd. (d); *B.B. v. Superior Court, supra,* 6 Cal.App.5th at p. 570; *In re R.N.* (2009) 178 Cal.App.4th 557, 566; *In re Carlos E., supra,* 129 Cal.App.4th at p. 1419.)

We review the juvenile court's decision to grant a section 388 petition for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Mary G.* (2007) 151 Cal.App.4th 184, 205.) We may disturb the juvenile court's exercise of that discretion only in the rare case when the court has made an arbitrary, capricious or patently absurd determination. (*In re Stephanie M.,* at p. 318; *A.H. v. Superior Court* (2013) 219 Cal.App.4th 1379, 1393.) We do not inquire whether substantial evidence would have supported a different order, nor

do we reweigh the evidence and substitute or own judgment for that of the juvenile court. (*In re Stephanie M.*, at p. 318.) We ask only whether the juvenile court abused its discretion with respect to the order it actually made. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

2. *The Court Did Not Deprive Sheree of Any Rights by Considering the Children's Section 388 Petition Before the Department's Section 387 Petition*

When the Department seeks to remove the dependent child from the physical custody of a parent, guardian, relative or friend to a more restrictive placement, such as foster care, because the previous disposition order has not been effective in protecting the child, it must file a supplemental petition pursuant to section 387. If the court finds the allegations of the section 387 petition, including the allegation that the previous disposition has not been effective, to be true, it then applies the procedures relating to disposition hearings to determine whether removal is necessary and, if so, what the appropriate new placement for the child should be. (§ 387; Cal. Rules of Court, rule 5.565(a) & (e); see *In re F.S.* (2016) 243 Cal.App.4th 799, 808; *In re T.W.* (2013) 214 Cal.App.4th 1154, 1161.)

Sheree contends that, by holding the section 388 hearing first and removing her as the children's guardian, the court deprived her of the second part of the bifurcated hearing to which she was entitled to under section 387 and California Rule of Court, rule 5.565(e)(2). Had such a hearing been conducted, she asserts, the court would have found Sheree posed no current risk to A.W. and Jordyn, as it had with respect to her children when it dismissed the section 300 petition.

Not only has Sheree forfeited this argument by failing to object on this ground in the juvenile court (see *In re S.B.* (2004) 32 Cal.4th 1287 [forfeiture doctrine applies in dependency proceedings]; *In re Wilford J.* (2005) 131 Cal.App.4th 742, 754), but also she is unable to establish that the order of proceedings deprived her of any rights. Assuming a section 387 petition was the proper vehicle for the Department's request to modify the prior guardianship order by removing A.W. and Jordyn from Sheree's custody (see Cal. Rules of Court, rule 5.740(c) [section 388 governs petitions to "modify or supplement orders" concerning dependency guardianship]; *B.B. v. Superior Court, supra,* 6 Cal.App.5th at p. 570 [same]), the Department's section 387 petition was subject to a different standard from the children's section 388 petition: No finding of detriment was statutorily required before the court could grant the children's section 388 petition to remove Sheree as guardian. (See *In re Jessica C., supra,* 151 Cal.App.4th at pp. 480-481 [section 387 petition by Department to remove child from guardian and place child in foster care requires "a more detailed procedure" and a different standard from a section 388 petition to modify a guardianship]; *In re Michael D.* (1996) 51 Cal.App.4th 1074, 1085, 1087 [when the government intervenes and petitions to remove a child from his home, the government should be required to "supply clear and convincing evidence of detriment"; parent's section 388 petition for modification, in contrast, is reviewed by juvenile court under best interest standard "even though the change of placement results in termination of a [dependency] guardianship conditionally established while the child was a dependent of the juvenile court"]; *In re Priscilla D., supra,* 234 Cal.App.4th at p. 1218 [parent seeking to terminate

dependency guardianship under section 388 need only show termination is in the child's best interest and "does not have to show that the guardianship is detrimental to the children"].)

To the extent Sheree contends a disposition hearing must be held whenever a child is removed from a legal guardian because section 361, subdivision (c), refers to taking a child "from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated," she confuses dependency guardianships established by the juvenile court as part of the plan to provide permanency and stability to a dependent child, which are not thereafter subject to section 361's standards, with predependency guardianships established under the Probate Code prior to the initiation of dependency proceedings, which are. In fact, the two forms of guardianship are treated quite differently. (See *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1122 [identifying "significant" differences between the two types of guardianships; among them, a predependency guardianship does not require continuous oversight while dependency guardianships are subject to continual supervision by the juvenile court]; *In re Carrie W.* (2003) 110 Cal.App.4th 746, 759 [same].)

A predependency guardian is afforded the same protections as a parent when it comes to the removal of a child by the juvenile court under sections 300 and 361. (See *In re Michael D., supra,* 51 Cal.App.4th at p. 1085 ["[i]f the child's exclusive residence is in the home of his or her legal guardian at the time the initial section 300 petition is filed, then again the government is required to prove the child would suffer detriment by clear and convincing evidence if permitted to remain in the legal guardian's home"].) Section 388 may not be used by the Department as a

vehicle to circumvent that heightened requirement. (See generally *A.H. v. Superior Court*, *supra,* 219 Cal.App.4th at p. 1392 ["minors cannot be removed from their parents or predependency guardians pursuant to a petition under section 388 without a finding of detriment based on clear and convincing evidence"]; Cal. Rules of Court, rule 5.570(h)(1)(A) [when the section 388 request "is for the removal of the child from the child's home, the petitioner must show by clear and convincing evidence that the grounds for removal in section 361(c) exist"].) However, as discussed, no similar detriment finding was required before the court could modify its prior guardianship order and remove Sheree as guardian. Accordingly, the court's decision to consider the children's section 388 petition first, prior to the Department's section 387 petition, did not deprive Sheree of any rights.

3. *Sheree's Equal Protection Argument, Asserted for the First Time on Appeal, Lacks Merit*

Sheree contends, as a dependency guardian, she "stood in the shoes" of a parent. Because a child may not be removed from a parent without a disposition hearing requiring a showing of detriment by clear and convincing evidence the same standard should apply to dependency guardians. The failure to afford her the same protection from interference with custody as a parent, she argues, violated the equal protection clause of the United States Constitution. Once again, Sheree did not explicitly raise this objection in the juvenile court; thus, it has been forfeited. (*In re S.B., supra,* 32 Cal.4th at p. 1293; *In re Wilford J., supra,* 131 Cal.App.4th at p. 754.) Even if we were to construe her counsel's statements concerning the juvenile court's prior

jurisdiction finding to encompass this objection, as Sheree urges us to do,[3] the argument lacks merit.

To prevail on an equal protection challenge, a party must first establish that "'the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.'" (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) If such a classification of similarly situated individuals exists and does not affect a fundamental right or a legally suspect class, the next inquiry is whether the classification is reasonably related to a legitimate government interest. If so, it must be upheld against an equal protection challenge. (See *Warden v. State Bar* (1999) 21 Cal.4th 628, 644 [when the challenged statutory classification of similarly situated individuals "neither proceeds along suspect lines nor infringes fundamental constitutional rights," it "must be upheld against [an] equal protection challenge *if there is any reasonably conceivable state of facts that could provide a rational basis for the classification*"]; *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 914 [in considering equal protection challenge that does not involve suspect classification or a fundamental right, the court inquires whether the statutory classification is "'rationally related to a legitimate governmental purpose'"].) Sheree's argument fails on both accounts.

At the threshold, it is well-established that parents and dependency guardians are not similarly situated when it comes to

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[3] Sheree's counsel stated before the court ruled on the section 388 petition, "[I]n a case involving the mother's children, the court did dismiss the three—a petition that had the same facts and circumstances earlier today, and just wanted that to be clear in the record." That statement of the evidence falls far short of an objection, much less one on equal protection grounds.

custody rights. Parents enjoy a fundamental due process right in the care, companionship and custody of their children. (*Santosky v. Kramer* (1982) 455 U.S. 745, 758 [102 S.Ct. 1388, 71 L.Ed.2d 599]; *In re Marilyn H.* (1993) 5 Cal.4th 295, 306 ["[a] parent's interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights"; for that reason the state bears a heavy burden before it may interfere in that relationship]; *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1210.) To whatever extent the interests of a legal guardian appointed in a predependency guardianship proceeding may coincide with those of a parent, a dependency guardian enjoys no fundamental interest in the custody of the dependent child: The custody of dependency guardians is conditional and subject to the continued oversight of the dependency court. (*Guardianship of Ann S.*, *supra*, 45 Cal.4th at p. 1122; see *In re Celine R.* (2003) 31 Cal.4th 45, 53 [while dependency guardianship is preferable to foster care, it does not create the permanency and stability offered by adoption; it "is not irrevocable" and remains subject to the continuing oversight of the juvenile court to ensure it continues to provide secure and option for the dependent child]; *In re Carrie W., supra*, 110 Cal.App.4th at p. 759 [in dependency guardianships, juvenile court has """continuing direct responsibility regarding the placement of the minor with the guardians and regarding the termination of the guardianship and establishment of a new guardianship"""]; *In re Carlos E., supra,* 129 Cal.App.4th at p. 1420; *In re Heraclio A.* (1996) 42 Cal.App.4th 569, 575-576.)

Even if we were required to consider the second step of the equal protection analysis, Sheree has not even attempted to argue that the legislative decision to treat parents and

dependency guardians differently was unreasonable in light of the state's legitimate interest in supervising the safety and care of a dependent child. (See *Guardianship of Ann* S., *supra*, 45 Cal.4th at p. 1122; *In re Carrie W., supra,* 110 Cal.App.4th at p. 759.)[4] Rather than focusing on any legislative rationale for imposing a different standard for the juvenile court's modification of a dependency guardianship, Sheree frames her equal protection argument as one premised on the "unique facts" of this case. Sheree asserts she agreed to guardianship, rather than adoption, in 2012 because she had hoped to preserve Rochelle B.'s parental rights to, and relationship with, A.W. and Jordyn. It is unfair, she insists, to remove A.W. and Jordyn from her custody when removal would not have occurred had she adopted them (as evidenced by the court's decision to permit her own children to remain in her custody).

As Sheree's argument highlights and the Legislature has recognized, there may be legitimate reasons for establishing a dependency guardianship and not pursuing adoption despite the greater stability and permanency adoption affords the dependent child. (See § 366.26, subd. (c)(1)(A) [court may establish legal guardianship as exception to statutory preference for adoption under certain circumstances].) We do not minimize the

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[4] Because Sheree never acknowledges the distinction between predependency guardianships and dependency guardianships, she does not argue the different procedural protection afforded the two types of guardians with respect to orders affecting custody violates equal protection. However, the state's interest in supervising dependent children, discussed in the text, provides ample justification for the legislative decision to treat the two types of guardianships differently.

important role dependency guardianships can play in advancing the complex interests of the dependent child, who, notwithstanding a need for stability, may realistically hope someday to be reunited with his or her family of origin. We certainly recognize "the decision to remove a dependent child from the home of a relative caretaker who has assumed the role of de facto parent" is not to be made lightly (*In re Jessica C., supra,* 151 Cal.App.4th at pp. 481-482), particularly when, as here, that caregiver has agreed to serve as legal guardian. Nonetheless, as discussed, one of the significant consequences of establishing a dependency guardianship as the permanent plan is the juvenile court's continued oversight of the guardianship to ensure, as the court did here, that the guardian remains the most appropriate placement for the dependent child.

4. *The Omission of a Section 366.3 Report Addressing the Preservation of Sheree's Guardianship, If Such a Report Was Required at All, Was Harmless*

Finally, Sheree contends the court abused its discretion in granting the children's section 388 petition to replace her as their legal guardian because the Department did not provide, and the court did not consider, a section 366.3 report evaluating whether A.W. and Jordyn could remain in Sheree's custody without terminating her guardianship. (See § 366.3, subd. (b) ["[p]rior to the hearing on a petition to terminate legal guardianship pursuant to this subdivision, the court shall order the county department of social services or welfare department . . . to prepare a report, for the court's consideration, that shall include an evaluation of whether child could safely remain in, or be returned to, the legal guardian's home, without terminating the

legal guardianship, if services were provided to the child or legal guardian"].)

Section 366.3 typically applies in cases in which the Department seeks to terminate guardianship as the permanent plan in favor of a more restrictive placement, namely, foster care. In those circumstances, the Department must prepare a report for the court to consider whether the guardianship can be preserved with services. (See § 366.3, subd. (b); *In re Jessica C., supra*, 151 Cal.App.4th at p. 484 [in section 366.3 "[t]he Legislature recognized that if the juvenile court's initial choice for a permanent plan of guardianship fails to serve a child's best interests, before moving to a less stable placement, the court should consider whether there is a way to preserve the guardianship"].)

There is some question whether section 366.3's reporting requirement applies to a petition to modify a guardianship when there is no request to terminate the guardianship for a more restrictive placement. (Compare *In re Priscilla D., supra,* 234 Cal.App.4th at p. 1217 ["Section 366.3[, subd. (b)] addresses the termination of a legal guardianship initiated by the state or the guardians [and] . . . requires the department to prepare a report addressing whether the child can safely remain in or be returned to the legal guardian's home without terminating the legal guardianship"; section 366.3 does not apply when the parent seeks to terminate the guardianship and obtain custody] with *In re R.N., supra,* 178 Cal.App.4th at p. 566 ["[s]ection 366.3 is implicated not only by petitions to terminate a guardianship, but by petitions [even by private parties] to modify a prior guardianship order by, among other things, appointment of a successor guardian"].)

We need not resolve that question. Even if a section 366.3 report was required in this case, its omission was harmless. The court had not only adjudicated the section 300 petition earlier that day and was fully aware of the facts that constituted the basis for the changed circumstances alleged in the section 388 petition, but it also had before it the Department's section 387 jurisdiction report, cited in the section 388 petition, in which the Department recommended removal of the children from Sheree's custody. That report also supplied evidence the children were happy and thriving in their new placement with their maternal aunt. That evidence was more than sufficient to establish that placement with a new guardian was in the children's best interest. The fact that such evidence appeared in a report other than one prepared under section 366.3 does not compel reversal. It is the nature of the evidence, not the label of the report, that informs the court's decision. (Cf. *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 354 [removal order was supported by substantial evidence; accordingly, court's citation to wrong statute to support its ruling harmless error]; *In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 303-304 [same]; see generally *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329 ["[n]o rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason"]; *Muller v. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887, 906-907 [same].)

DISPOSITION

The October 6, 2015 order granting the children's section 388 petition is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.