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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re C.P. et al., Persons Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CYNTHIA V.,

Defendant and Appellant.

B272192

(Los Angeles County  
Super. Ct. No. CK98836)

APPEAL from an order of the Superior Court of Los Angeles County. Akemi Arakaki, Judge. Affirmed.

Cynthia V., in pro. per., for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Defendant and appellant Cynthia V. is the maternal cousin of minor half brothers, C.P. and M.M. The Los Angeles County Department of Children and Family Services (Department) had placed both boys in Cynthia's care after they were detained from their parents. In September 2015, the minors were removed from Cynthia's care. Cynthia appeals from the denial of her petition pursuant to Welfare and Institutions Code section 388 (hereafter section 388) in which she sought the return of the boys.

We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Three-and-a-half-year-old C.P. and two-year-old M.M. are half brothers (they have different fathers). C.P. was detained from his parents at six months, and M.M. as a newborn. None of the parents is a party to this appeal. Cynthia is described as a maternal cousin of the boys.

Pursuant to a general placement order to find a suitable placement for the boys, the Department placed the boys with Cynthia. Sometime after M.M. was placed with Cynthia in late January 2015, one of Cynthia's adult daughters (Vanessa) moved into her home. On or about August 5, 2015, Cynthia and Vanessa got into a physical altercation that was apparently witnessed, at least in part, by C.P. A child abuse referral was made against Cynthia in August 2015 based on allegations of general neglect and emotional abuse arising from that physical altercation. Both C.P. and M.M. were removed from Cynthia's home and placed in foster care.

Cynthia filed a grievance with the Department about the removal and thereafter filed her section 388 petition with the court on September 21, 2015. The court agreed to hear the petition and ordered the Department to file a response.

In her petition, Cynthia raised the same arguments she raises here. Namely, she asserted that because she is a maternal relative of the boys, they would be better off living with her and she wanted to adopt them. She contended the Department exaggerated the incident between her and Vanessa, that Vanessa had since moved out of her home, and that the boys had never come to harm while placed with her. Cynthia described the incident between her and Vanessa as an “isolated” argument and said there were no ongoing domestic problems in her home. She argued that, in contrast, M.M. had been injured while living with the current caregivers, when he apparently fell and hit his head on a fireplace.

In its response to Cynthia’s petition, the Department summarized its investigation and stated it had interviewed Cynthia and Vanessa about the August 2015 domestic violence incident. Cynthia acknowledged she and Vanessa had an argument but claimed the Department “blew that out of proportion.” She said they had gotten into an argument about where Vanessa had parked Cynthia’s car because of the expensive parking tickets in their neighborhood. After Cynthia told Vanessa she had to move the car, Vanessa stood up, told Cynthia to leave her room and threw her arms up in a dramatic gesture. In doing so, Vanessa hit Cynthia in the face. Cynthia said she stumbled and fell backwards against the bed. She said the Department had it wrong, and it was not some big “fist fight.”

The Department reported that Vanessa told the social worker the August 2015 incident was just a small, “stupid” argument over the car, and her “fingers” accidentally hit her mother’s face. She denied it was any kind of serious fight or that they had any ongoing problems. She felt the Department was

against her mother. She said they both were willing to adopt one of the boys and let them be with their “real family.” She explained that when she had tested positive for marijuana, it was because she had been using marijuana edibles for chronic pain. Vanessa said she had replaced the marijuana with regular exercise instead and had moved out of her mother’s home in order to allow the boys to come home.

The Department’s report also included statements from two social workers involved in the case. They indicated that Cynthia was “really upset” when she initially reported the incident with Vanessa, and definitely did not describe the altercation as an “accidental” hit. Cynthia also said she was upset that Vanessa had been substituted as the new “payee” for C.P.’s benefits, instead of Cynthia. Cynthia said she was the one who took care of him. She described Vanessa as very “controlling,” immature and unfit to parent the boys. The social workers reported that Vanessa had initially claimed her mother had slapped her in the face “really hard” during the August 2015 incident (after she had hit Cynthia’s face). It was only after the boys were to be removed from the home that Vanessa claimed it was just a small disagreement.

The Department also reported that when long-term plans for the boys were discussed with Cynthia, she was inconsistent. Cynthia raised the issue of long-term guardianship instead of adoption, and expressed more interest in M.M. She suggested that Vanessa or one of her other adult children should be considered for C.P. Cynthia did not express a commitment to providing a stable home environment for both boys until after the boys had been removed.

The Department stated it was not in the best interests of the boys to be returned to Cynthia's care. The Department stressed that both Cynthia and Vanessa expressed regret about the domestic violence incident, but continued to minimize it and attempt to shift blame. They spoke negatively of one another and had "unpredictable reactions" to each other. The Department was concerned about the family dynamics and the impact on the boys given their young age. Cynthia had not shown a consistent commitment to adopt the boys, and it appeared to the social workers that the August 2015 incident had been precipitated by the change in payee designation for C.P.'s benefits that had resulted from the Department considering Vanessa as a caregiver for C.P. as Cynthia had suggested. Cynthia's expressions of being willing to adopt both boys were only made after they had been removed from her care. Cynthia did not have an approved home study. It was further noted that both C.P. and M.M. were thriving in the home of the foster couple (Mr. and Mrs. P.) with whom they had been placed.

The Department also filed two last minute information reports with the court prior to the hearing on Cynthia's petition. The Department reported that Mr. and Mrs. P. had an approved adoptive home study and were interested in adoption. Both boys were described as "attached" to their foster parents and continuing to do well in the home.

At the hearing on December 1, 2015, counsel for the boys submitted on the Department's recommendation to deny Cynthia's petition, stating she did not believe it was in the best interests of the children to be returned to Cynthia's care. However, counsel for the children said the Department should facilitate monitored visitation for the boys with Cynthia.

The court denied the section 388 petition, explaining that, based on the totality of information in the reports, it could not conclude there had been a material change in circumstances or that the interests of the boys would be best served by taking them out of their placement with Mr. and Mrs. P. and returning them to Cynthia's care. The court ordered the Department to arrange monitored visitation for Cynthia with the boys, and ordered the Department to refer the case "to the consortium to mediate possible continued visits between relative Cynthia [V.] and the children, to occur after the adoption of the children."

This appeal followed.

### DISCUSSION

We review an order on a section 388 petition for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 (*Stephanie M.*); accord, *In re Hector A.* (2005) 125 Cal.App.4th 783, 798 ["A petition under section 388, subdivision (a) '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.'"]) We conclude the juvenile court acted well within its discretion in denying Cynthia's petition.

As the petitioning party, Cynthia bore the burden of proving it was in the best interests of the children for the court to order a change in placement, despite their reported well-being in the home of Mr. and Mrs. P., who were the prospective adoptive parents. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 325.)

Cynthia's briefs fail to comply with California Rules of Court, rule 8.204(a). In particular, Cynthia's briefs do not provide citation to relevant authority supportive of her position, nor any proper citations to the record.

More importantly, she cites to no *material* evidence showing it was in the best interests of the boys to return to her care. Cynthia rests her argument almost entirely on generalized statements and supposition. Cynthia states she is family, and asserts therefore that it is preferable for the boys to live with her. At the time the boys were removed from Cynthia's home, C.P. had lived with her for about a year and a half. M.M. had lived with her for about eight months. As discussed above, there had been a report of a domestic violence incident between Cynthia and her adult daughter Vanessa that had occurred in the presence of at least one of the boys. Cynthia was inconsistent with her desires about long-term plans for the boys and did not have an approved home study. She regularly expressed more interest only in caring long-term for M.M. The Department and the boy's counsel asserted it was in their best interests to remain together in their prospective adoptive home. On such a record, we cannot conclude the juvenile court abused its discretion in denying the petition.

To the extent Cynthia suggests the court abused its discretion because she is an extended family member and placement with blood relatives is statutorily preferred, she is incorrect. Assuming only for the sake of argument that the relative placement preference was at issue here (and we are not concluding it is), Welfare and Institutions Code section 361.3 does *not* identify a cousin as a relative entitled to preference. Moreover, our Supreme Court has explained that "regardless of the relative placement preference, *the fundamental duty of the court is to assure the best interests of the child[.]*" (*Stephanie M.*, *supra*, 7 Cal.4th at p. 321, italics added.)

### **DISPOSITION**

The juvenile court's December 1, 2015 order denying appellant's petition, brought pursuant to Welfare and Institutions Code section 388, is affirmed.

GRIMES, J.

WE CONCUR:

FLIER, Acting P. J.

SORTINO, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.