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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Melanie K. et al., Persons  
Coming Under the Juvenile Court  
Law.

B277845

(Los Angeles County  
Super. Ct. No. CK77718)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

Paul K.,

Petitioner and Appellant.

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

Paul K., in pro. per, for Petitioner and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Tracey F. Dodds, Principal  
Deputy County Counsel for Plaintiff and Respondent.

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## **I. INTRODUCTION**

The maternal uncle, Paul K., appeals from the orders denying his Welfare and Institutions Code<sup>1</sup> section 388 petitions. He argues the trial court abused its discretion when it denied a number of his section 388 petitions without a hearing. We conclude that he lacks standing to appeal from the orders denying his request for removal of social workers and placement of the children with the maternal great uncle. As for his requests for placement and dismissal of the case, he failed to make a prima facie case demonstrating a change in circumstance or new evidence. In addition, he failed to show it would be in the children's best interests to dismiss the case or modify the placement order. We affirm the orders.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

In June 2009, the Los Angeles County Department of Children and Family Services (the department) received a referral shortly after Mother delivered Melanie K. Hospital staff reported Mother was very dirty, had a strong odor, and appeared to have a mental illness. On October 14, 2009, the juvenile court

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

sustained a dependency petition alleging Mother exhibited bizarre behavior and failed to care for Melanie, causing the child to suffer dehydration, hyperbilirubinemia, and hypothermia. On December 14, 2010, dependency jurisdiction was terminated with a family law order granting Mother sole legal and physical custody of Melanie.

On June 4, 2013, the department received a referral alleging Mother neglected Melanie, then age 4, and Kristen, then age 2. The caller, who was a family friend, reported Mother was a hoarder and had an unknown mental illness. The maternal grandmother used to supervise the family but she died in March 2013. According to the caller, after the maternal grandparents passed away, Mother lost weight and walked around the neighborhood collecting trash.

The caller stated there were rats and five diseased dogs in the home, located in Bel Air. Mother and the children smelled from bad hygiene. Mother told the caller the children had not eaten food in days, and that the girls liked eating dog food. She also indicated one of the children had become sick from food she had retrieved from a neighbor's trash can. Mother stated there was dog feces and urine in the home and the children played with the feces. During a visit to the caller's home, Mother said she left the children home alone. The department and police were unable to gain entry to the Bel Air home because two steel gates enclosed the front yard.

Sometime in July 2013, Mother moved with the children to a home in West Hollywood. On July 15, 2013, law enforcement came to the home after neighbors reported that an argument between Mother and Paul was loud and "out of control." Mother

and the children later returned to the Bel Air home in August 2013.

On August 16, 2013, the police contacted the department after Mother was placed under a psychiatric hold and taken to a hospital. The police arrived at the home to conduct a welfare check and Mother came to the door wearing only an opened robe. The only food in the kitchen was instant noodles and there was trash all over the floor. The police reported the children were detained and Paul wanted them released to him.

The social worker met Paul at the police station. Paul demanded the children be released to him immediately. The social worker reported Paul's behavior was "erratic and out of control." Paul indicated he took care of Mother and the children financially and provided food for them. He denied Mother had any mental illness or that she had a prior dependency case. Paul stated he was self-employed as a researcher and inventor who sold secret inventions to the British government. He denied the Bel Air and West Hollywood homes were in deplorable condition and claimed they were neat and clean. Paul stated the animals were well-cared for and he regularly took them to the veterinarians and groomers. He initially told the social worker he lived with Mother and the children, but later said he lived with and cared for his blind aunt. The department placed the children in foster care.

On August 21, 2013, the department filed a section 300 petition on behalf of Melanie and Kristen. The petition alleged Mother had mental and emotional problems that rendered her unable to provide regular care and supervision to the children. On October 10, 2013, the juvenile court ordered the department to assess Paul as a relative placement. Paul stated he had been

involved with the children since birth and would abide by all court orders. The department recommended the children remain in their current placement in foster care pending evaluation of Paul's West Hollywood home.

On November 7, 2013, the juvenile court sustained the amended section 300 petition. Mother was granted monitored visits and ordered to participate in mental health counseling.

On December 2, 2013, Paul filed a section 388 petition, requesting that the children be released to him. The request was summarily denied on December 11, 2013.

On April 16, 2014, Paul filed another section 388 petition and a petition for guardianship. The section 388 petition was denied on May 8, 2014. On July 13, 2014, the children were placed with foster parents Mr. and Mrs. T. According to the September 17, 2014 status report, Mother did not want Paul to have custody of her children. Mother explained she did not get along with Paul and she did not want her children to witness any argument she might have with him.

On October 24, 2014, Paul filed his third section 388 petition seeking custody of the children. The juvenile court denied the petition on October 28, 2014.

On December 16, 2014, Paul filed a fourth section 388 petition, requesting visitation with his nieces. The petition was denied on December 18, 2014. On January 5, 2015, Paul filed a request for disclosure of the children's juvenile court records pursuant to section 827. The disclosure request was denied on February 11, 2015.

On January 15, 2015, Paul filed a de facto parent request. He stated he had cared for the children when they lived with him

briefly prior to being detained. On March 17, 2015, the juvenile court denied Paul's request for de facto parent status.

On January 20, 2015, two maternal great aunts, Marie A. and Yvette A., filed a section 388 petition. They sought custody of the children, or in the alternative, visitation. The department assessed the maternal great aunts in a March 17, 2015 pre-release investigation report. The maternal great aunts blamed Paul for the children's removal, stating he was very controlling and had created many problems for Mother. When the social worker asked them why they had stated in their section 388 petition that they hoped Paul would adopt the children, they denied making such a statement. They claimed that an attorney hired by Paul had written that statement in their section 388 petition. On March 17, 2015, the juvenile court granted the maternal great aunts monitored weekly visits with the children. Only one of the maternal great aunts visited the children, twice a month.

By November 3, 2015, the foster parents, Mr. and Mrs. T., stated that they wanted to adopt the girls and had an approved home study. The children appeared happy and were thriving in their placement. Although Mother had participated in services, she continued to have unresolved mental and emotional problems.

On April 25, 2016, Paul filed his fifth section 388 petition. He alleged the foster parents coached the children, and abused and threatened them. He requested the children be removed from the foster home and placed with him. The department and law enforcement conducted investigations and concluded there was no support for the allegations of abuse, neglect, or coaching.

The children denied they were abused and appeared well-cared for and comfortable in the foster home.

On May 4, 2016, a social worker contacted Paul to schedule an interview and home assessment. Paul stated he was remodeling his home and living at a temporary residence. He made various requests for county counsel, Mother's attorney, or his attorney to be present during the home study. The social worker stated her assessment of Paul's home was hampered by his lack of cooperation and determination to dictate how the inspection should be conducted. The department recommended denial of Paul's section 388 petition in its May 12, 2016 report.

Although the March 17, 2015 court order allowed Paul to have only one monitored visit per month, he began attending weekly visits with Mother and the children after Mother hired a professional monitor. During the visits, the children were engaged with Paul, but not with Mother. The social worker believed Paul's presence limited Mother's ability to interact with the children because he monopolized the visits. The prior visitation monitor reported Paul played well with the children but made inappropriate comments. Paul instructed the girls to call him "daddy," and asked them where they wanted to live and why they did not want to return home.

On May 9, 2016, maternal great uncle, Eli A., filed a section 388 petition, requesting that the children be placed with him. Eli had no prior contact with the department. He did not know about the prior and current dependency cases. He sought custody of the children because he had heard from his sisters, Marie and Yvette, that the girls were abused by the foster parents. Because Eli lived in Washington State, the department

had submitted an Interstate Compact on Placement of Children (ICPC) request for the home study.

On May 10, 2016, Paul filed a sixth section 388 petition. He alleged the social worker openly admitted the department had prejudged and discriminated against him for placement. He requested dismissal of the dependency case or release of the children to him. In a July 14, 2016 report, the department denied Paul's allegations of prejudice and bias and stated it had assessed him for placement on several occasions. The department reported: "Maternal uncle Paul provided misleading statements throughout the interviews and assessments and displayed erratic and volatile behavior. Furthermore, maternal uncle Paul's lack of cooperation, insistence on his attorney being present and determination to dictate when and how the assessments are to be conducted limited [the social workers'] ability to conduct a thorough and comprehensive assessment for placement."

Melanie and Kristen indicated that during visits Mother had poor hygiene and said mean things to them. They reported Mother and Paul talked to them about where they should live while the foster parents did not do this. The children enjoyed visits with Paul but did not want to live with him. They liked living with the foster parents.

In May 2016, shortly after Mother gave birth to a son, K.K., hospital staff contacted the department because they were concerned about Mother's ability to care for the baby. On May 24, 2016, the department filed a section 300 petition alleging Mother's mental and emotional problems, including a diagnosis of adjustment disorder and psychosis, rendered her unable to care for K.K. The baby was detained and Mother was granted



monitored visits. The section 300 petition was sustained on July 14, 2016.

On July 11, 2016, Paul filed a seventh section 388 petition. He requested a continuance so that the department could assess his home and Eli's home. He stated it had been two months since the juvenile court ordered the ICPC home study but nothing had been done. Paul sought custody of his nieces and nephew. He indicated he would offer full financial support to the children if they were placed with him or Eli. Further, Paul sought removal of two social workers pursuant to section 16513.5.<sup>2</sup> He claimed they were biased and their reports contained "many false claims, [blatant] lies and false information." Paul also renewed his request for dismissal of the case under section 390. On July 14, 2016, the juvenile court denied the petition except for the request that the children be placed with Eli.

On July 13, 2016, Paul filed his eighth section 388 petition. He alleged the visitation monitor had been receiving rides home from the foster parents. He asserted this showed collusion between the foster parents and the monitor. He requested that the monitor be removed and her reports discarded. He also sought dismissal of the case or placement of the children with a relative. The juvenile court summarily denied the petition on July 21, 2016.

On August 2, 2016, the juvenile court conducted a hearing on Paul's April 25 and May 10, 2016 section 388 petitions. The juvenile court found there was no evidence the children were coached or mistreated by the foster parents. Further, the court

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<sup>2</sup> Although Paul stated that he sought removal of two social workers, it appears that one of the people he sought to remove was the visitation monitor, not a second social worker.

found the department had twice assessed Paul for placement and there was no evidence of discrimination against him. In addition, it was not in the children's best interest to be placed with Paul: "Although he claims to have a great concern for the children, in fact, he was evidently not at all either aware of or caring of the original circumstances, the deplorable conditions that the children were living in with the mother that brought this case to court. From what I've read from the voluminous documents, the maternal uncle was the person that controlled the family finances and yet the children and the mother were living in deplorable circumstances . . . . [¶] And in the meantime, while this case has been progressing, the children have been living in a very stable and loving placement with their foster parents."

On September 30, 2016, the juvenile court held a hearing on Paul's request for placement of K.K. with him or paternal great uncle Eli. Mother testified she wanted K.K. returned to her care or placed with Eli. The trial court denied Paul's request for placement of K.K. with him. The court found Paul had little contact with K.K., and had not cooperated with the department for the placement assessments. The juvenile court ordered an adoption ICPC for K.K. to assess Eli's home in Washington State.

On October 4, 2016, the juvenile court held a hearing on Eli's section 388 petition for relative placement of Melanie and Kristen. The court found it was not in the best interests of the girls to place them with Eli. The girls were thriving and bonded with their prospective adoptive parents. They did not know Eli and did not want to be placed with him. Although they had one 50-minute meeting with Eli, one of the girls could not remember his name after the visit.

The juvenile court denied Mother's request for continuance of the section 366.26 hearing and summarily denied four section 388 petitions: "There have been 17 [section] 388's filed in this case. Generally, they have always preceded the [section 366.26] hearing. This court has generously set many of them for hearing although some of them were redundant. We set them for hearing, continued the [section 366.26] hearing. And this morning, before today's section [366.26] hearing, I received four more [section] 388 petitions, and every single one of them is either redundant, presents no new information or change of circumstances at all and does not request orders that are in the best interest of the children. I have summarily denied them." The juvenile court found by clear and convincing evidence that Melanie and Kristen were adoptable and terminated Mother's parental rights.

On August 4, 2016, Paul filed three notices of appeal. Two of the notices of appeal were from the July 14, 2016 order denying his section 388 petition. His third notice of appeal was from the July 15, 2016 order granting the department's request to co-monitor visits with the paid professional monitor.<sup>3</sup> He also filed a fourth notice of appeal on October 13, 2016, challenging the October 4, 2016 order, which denied his section 388 petition without a hearing.

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<sup>3</sup> Paul forfeits any claim of error as to the monitored visitation order. "On appeal we need address only the points adequately raised by [appellant] in his opening brief on appeal." (*Tellez v. Rich Voss Trucking, Inc.* (2015) 240 Cal.App.4th 1052, 1066.)

### III. DISCUSSION

#### A. *Standing*

Only a party aggrieved by a decision has standing to appeal. (*In re K.C.* (2011) 52 Cal.4th 231, 236; *In re D.M.* (2012) 205 Cal.App.4th 283, 293.) “An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision.” (*In re K.C.*, *supra*, 52 Cal.4th at p. 236.) “An appellant must show prejudicial error affecting his or her interest in order to prevail on appeal. [Citation.] An appellant cannot urge errors which affect only another party who does not appeal.” (*In re D.M.*, *supra*, 205 Cal.App.4th at p. 294.) An appeal is subject to dismissal where the appellant lacks standing. (*Ibid.*)

Paul challenges the orders denying his July 11, 2016 section 388 petition. In the petition, he sought removal of the social workers and placement of the children with Eli. But Paul has no standing to appeal from the denial of these requests. He fails to show how he is affected by the department’s assessment of Eli as a relative placement for the children. In addition, Paul sought removal of the social workers pursuant to section 16513.5, but only a party may make this request.<sup>4</sup> As a relative, Paul is

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<sup>4</sup> Section 16513.5 provides: “Any party to a dependency proceeding may bring a motion before the juvenile court to have a social worker removed from the case. The juvenile court judge in the dependency proceeding shall grant the motion if a preponderance of evidence shows that a conflict of interest has occurred that would interfere with the social worker’s ability to objectively carry out his or her duties, which may include, but is not limited to, any of the following: [¶] (a) The social worker has

not deemed a party to this dependency case.<sup>5</sup> (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 68.) Therefore, he does not have standing to challenge the denial of his request for removal of the social workers from the case.

Paul nonetheless argues he has standing, relying on *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023 (*Cesar*). That case is inapposite. In *Cesar*, the grandmother had standing to appeal the denial of her request for placement because section 361.3 conferred upon her a right to preferential consideration for placement. (*Id.* at pp. 1034-1035.) Likewise, Paul has standing to appeal the denial of his request for placement of the children with him. But he has no standing to appeal the denial of placement with Eli because Paul's interest is not affected by the order. We thus dismiss his appeal from the orders denying his

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had sexual contact, as defined in [s]ection 43.93 of the Civil Code, with any party to the dependency proceedings. [¶] (b) The social worker has a relationship with an individual who is adopting or attempting to adopt a child who is the subject of the pending dependency proceeding, and the relationship is of such a nature that a conflict of interest or bias may exist on the part of the social worker which may compromise his or her objectivity. [¶] (c) The social worker has been convicted of perjury with regard to the dependency proceeding before the court.”

<sup>5</sup> Paul argues his due process right was violated because he was not provided with the department's May 12 and July 14, 2016 reports. But Paul was not entitled to the reports because he is not a party to the dependency case. To obtain these reports, Paul was required to file a request for disclosure of the juvenile court case (form JV-570). (§ 827; Cal. Rules of Court, rule 5.552(b).) He had filed a form JV-570 in January 2015 but it was denied by the juvenile court for failure to show good cause. He did not file another form JV-570 until October 25, 2016.

request for removal of the social workers and placement of the children with Eli.

B. *Denial of Section 388 Petitions*

Under section 388, subdivision (a)(1), a parent or person having an interest in a child may petition for a hearing to change, modify or set aside any previously made order upon grounds of change of circumstance or new evidence. A petitioner requesting modification under section 388 has the burden of proving by a preponderance of the evidence that the child's welfare requires such change. (Cal. Rules of Court, rule 5.570(h)(1)(D); *In re A.A.* (2012) 203 Cal.App.4th 597, 612.) The petitioner must show changed, not changing, circumstances. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) In addition, new evidence or change in circumstance must be of such significant nature that it requires modification of the challenged order. (*In re A.A., supra*, 203 Cal.App.4th at p. 612; *In re Mickel O., supra*, 197 Cal.App.4th at p. 615.)

To obtain an evidentiary hearing on a section 388 petition, the moving party must make a prima facie showing of both a change in circumstance or new evidence, and the promotion of the child's best interests. (Cal. Rules of Court, rule 5.570(d) & (e); *In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.) "A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause." (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) "[T]he allegations of the petition must be specific regarding the evidence to be presented and must not be conclusory." (*In re Alayah J., supra*, 9 Cal.App.5th at p. 478.) We review an order denying a section 388 petition for an abuse of

discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317-318; *In re G.B.*, *supra*, 227 Cal.App.4th at p. 1158 [denial of section 388 petition without hearing reviewed for abuse of discretion].)

Paul asserts it was an abuse of discretion to deny his July 11 and July 13, 2016 section 388 petitions without an evidentiary hearing. In his July 11, 2016 petition, Paul alleged his decision to offer full financial support to the children if they were placed with a blood relative constituted a change in circumstance. In his July 13, 2016 petition, he alleged that the visitation monitor was receiving rides home from the foster parents. Based on this evidence, the petition alleged collusion and fraud by the foster parents and the visitation monitor. Paul's decision to provide financial support to the children only if they were placed with a blood relative is not a change in circumstance. According to Paul, he had been providing financial support to the children at the time that they were removed from their mother's custody. Mother was a relative of Paul. Thus, his decision to condition further and a possibly greater financial support to the children, is not the type of significant change in circumstance that warrants a modification of placement. Moreover, even if the foster parents were providing transportation for the visitation monitor, the trial court did not abuse its discretion in concluding that this was not the type of significant change in circumstance that warranted changing Melania's and Kristen's placement.

More importantly, the petitions failed to show why it would be in the girls' best interests to remove them from the foster parents' home to place them with Paul. The girls wanted to live with the foster parents and not Paul. They were happy and thriving in their current placement. While Paul repeatedly made requests for placement, he did not cooperate with the

assessments. Moreover, Paul had previously denied that Mother had mental illness and claimed to be financially responsible for the children during a time when they were eating dog food and food from the trash. The juvenile court did not abuse its discretion in summarily denying the July 11 and 13, 2016 petitions seeking placement of the children with Paul.

Paul also sought dismissal of the case pursuant to section 390.<sup>6</sup> “[A] petition may not be dismissed under section 390 unless the court makes the statutorily required findings, namely (1) ‘that the interests of justice and the welfare of the minor require the dismissal’ and (2) ‘that the parent or guardian of the minor is not in need of treatment or rehabilitation.’ [Citations.] ‘Such dismissals are rare and usually occur only when the goal of protecting the child has been achieved without court intervention.’” (*In re Carl H.* (2017) 7 Cal.App.5th 1019, 1038.) Paul failed to present evidence that Mother no longer needed treatment and that the children would be protected without court intervention. Mother did not progress beyond monitored visits and she was unable to engage with the children or assume a parental role. She continued to have unresolved mental and emotional problems and was unable to demonstrate a change in her parenting behavior. The department reported the family remained at “very high” risk for future abuse and neglect. Given the continued need for court intervention, the juvenile court did

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<sup>6</sup> Section 390 provides: “A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require the dismissal, and that the parent or guardian of the minor is not in need of treatment or rehabilitation.”



not abuse its discretion in denying Paul's request for dismissal of the case.

### **DISPOSITION**

We affirm the orders denying the maternal uncle's section 388 petitions.

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KIM, J.\*

We concur:

BAKER, Acting P.J.

MOOR, 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.