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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re TYLER W., a Person Coming  
Under the Juvenile Court Law.

B284783

(Los Angeles County  
Super. Ct. No. CK14138)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

G.W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Phillip Soto, Judge. Affirmed.

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

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

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In 2012, the juvenile court found Tyler W., then six years old, qualified as a dependent child under Welfare and Institutions Code section 300, and ordered him removed from parental custody. The child's father, appellant Gregory W., had his reunification services terminated at the twelve-month review hearing. Four years later, Gregory W. filed a petition under Welfare and Institutions Code section 388 requesting that the court reinstate his reunification services. The juvenile court denied Gregory's petition, but invited him to renew his petition after he had completed additional services. We affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

### ***A. Detention, Jurisdiction and Disposition***

#### ***1. Section 300 petition and detention***

In March of 2012, the Department of Children and Welfare Services received a referral alleging general neglect of Tyler W., then six years old. The referral reported that Tyler had been living with his aunt, Pamela W., when she was arrested in connection with an assault on her boyfriend, Kevin G. According to a police report, Pamela's son had "aggressively beaten" Kevin inside the home, resulting in significant brain injuries. Pamela then allegedly instructed Tyler and her son to lie about what had occurred. Tyler's father, Gregory W. (Father), was out of town

due to his work as a truck driver; his mother, U.W., could not immediately be found.

The day after the assault, DCFS interviewed Tyler at a police station. Tyler stated that Pamela had kneed Kevin in the head, and then Kevin tried to shoot Pamela in the leg. During the altercation, one of Pamela's sons started hitting Kevin "on the face and his chest," causing Kevin to fall to the ground and hit his head.

Tyler stated that his parents lived in Las Vegas, and that he resided with Pamela. He reported that he felt happy and safe in the home, and that Pamela gave him adequate food and clothing. Tyler also stated, however, that Kevin kept a firearm in Pamela's bedroom, and that Kevin occasionally fired the weapon on the roof of the house. Tyler claimed that on one occasion, he had found a bullet in the house that he then loaded into Kevin's gun.

The DCFS social worker who conducted the interview noted that Tyler was extremely hyper, and had a short attention span. Tyler asserted that his father's girlfriend, T.M., had hit him with a belt on his head and other parts of his body. The social worker observed marks on those areas of Tyler's body. However, a nurse practitioner who later examined Tyler found the marks to be consistent with eczema.

DCFS interviewed Pamela at the police station. She stated that Tyler had lived with her "off and on since he was born." Pamela explained that Tyler's mother had "issues with crack cocaine," and was currently residing in a sober living facility. Tyler's father was unable to care for the child because he was "in truck driving school."

DCFS asked Pamela to describe the incident that had led to her arrest the previous day. Pamela explained that she and Kevin had engaged in numerous physical altercations in the past, and that he had a history of hitting and biting her when he drank. According to Pamela, Kevin had arrived at her house drunk and got into a fight with one of her sons. While Kevin was reaching for his gun, her son punched him, causing Kevin to fall “and hit his head on the cement.”

DCFS asked Pamela if she had heard about a recent incident during which Father’s girlfriend T.M. had tried to run him over with a car. Pamela stated that she knew T.M. had hit Father in the head, causing a concussion and a contusion that required hospital treatment.

Pamela told DCFS she suffered from mental illness, including depression, schizophrenia and auditory hallucinations. She stated that she had not received any treatment for her mental illness in at least two years, and that she drank alcohol and smoked marijuana.

On March 12, 2012, DCFS filed a petition alleging Tyler fell within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a) and (b).<sup>1</sup> The petition alleged one count under subdivision (a), and four counts under subdivision (b).<sup>2</sup> Counts (a)(1) and (b)(1) alleged T.M. had

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<sup>1</sup> Unless otherwise noted, all further statutory citations are to the Welfare and Institutions Code.

<sup>2</sup> The original petition, filed in March of 2012, included only one allegation under subdivision (a) and two allegations under subdivision (b). In May of 2012, however, DCFS filed an

repeatedly struck Tyler with a belt, and that Father had failed to protect the child from such abuse. The three remaining counts under subdivision (b) alleged that Father had made an inappropriate plan for the care of Tyler when he left the child with Pamela; that Father and T.M. had engaged in a violent altercation in the presence of Tyler; and that Tyler's mother, U.W., had failed to reunify with Tyler's six siblings, and had a "20-year history of unresolved substance abuse."

DCFS filed a detention report in support of the petition that summarized the interviews it had conducted during the initial investigation. DCFS concluded Tyler was at high risk of future harm, and recommended that he be detained from the parents.

At the detention hearing, the juvenile court found DCFS had made a prima facie showing that Tyler was a person described under section 300. The court ordered the child detained from his parents, and placed him with his maternal grandparents. The court scheduled a jurisdiction and disposition hearing on May 15, 2012.

## *2. Jurisdiction and disposition*

On May 5, 2012, DCFS filed a "Jurisdiction/Disposition Report" that contained a summary of additional interviews the department had conducted of family members and other individuals involved in the case.

DCFS interviewed the child's mother, U.W. (Mother), at her sober living facility. She stated that Tyler had told her T.M. hit him on his head and arms. Mother also asserted that Father

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amended petition that added two additional allegations under subdivision (b).

had told her T.M. “whopped” Tyler with a belt. Mother acknowledged she had been addicted to crack cocaine for approximately 20 years, but claimed that she had been sober for the past two years. Mother also acknowledged she had failed to reunify with six of Tyler’s half-siblings, all of whom had received permanent placement through legal guardianship or adoption.

DCFS also interviewed Tyler’s maternal grandmother, Janice W., who was currently caring for the child with her husband. Janice reported that Father had told her T.M. never hit Tyler. Janice also stated that Tyler talked “very well” about T.M., and said he loved her. Janice asserted that the child frequently “fabricate[d] things,” and that she “hope[d] everyone [would] take[] what [he] says with a grain of salt” because it “would be a shame if T.M. was found guilty for something she didn’t do.”

Janice reported that Tyler was doing well in her care, but still had “behavior things going on,” and was scheduled to have a “psychiatric evaluation due to his hyperactivity.” According to Janice, Tyler was very hyper, had difficulty telling the truth and frequently had tantrums when he did not get what he wanted.

DCFS interviewed Father over the phone. He denied T.M. had ever hit Tyler, and claimed that the marks on the child’s body were eczema, not bruises. Father stated that Tyler’s mother had abandoned the child, and that he was currently attending “trucking school to get a better life for [his] family.” Father said he did not know what had happened at Pamela’s house because he was out of town when the assault occurred. He was supportive of placing Tyler with the maternal grandparents.

DCFS informed Father the department had received information indicating that T.M. recently attempted to assault

him with a car. Father acknowledged that an event with a car had occurred three weeks earlier, but denied that T.M. had tried to hurt him. Father explained that on the day in question, T.M. wanted to drive to the store, but he needed the car to go to work. Father claimed that when T.M. started to drive away, he jumped onto the vehicle to try to stop her. He then lost his footing, and fell to the ground. Father admitted he had told Pamela that T.M. hit him in the head that day, but denied that is what actually occurred: “Yeah[,] I told [Pamela] that but that really didn't happen. . . . I just told her that. I didn't get hurt and [T.M.] didn't cause me no harm.”

DCFS also spoke with T.M., who denied hitting Tyler. T.M. asserted that she disciplined the child by making him sit in time out. When asked about the recent driving incident with Father, T.M. stated that she had tried to end her relationship with Father that day, and was attempting to leave the home. According to T.M., Father did not want her to leave, so he stood in front of the car. When she started to drive, Father jumped onto the windshield of the car, and then fell off the vehicle.

DCFS also interviewed Tyler's cousin (Pamela's son), who stated that Tyler had told him T.M. hit him with a belt. The cousin also claimed he had seen bruises on Tyler's back. When asked if he knew whether Tyler had eczema, the cousin responded that he knew “what eczema looks like and it didn't look like that.”

In its assessment and evaluation, DCFS concluded that neither parent had a stable or safe home environment, and recommended that the court sustain the petition, and detain Tyler. DCFS further recommended that the court deny reunification to services to Mother, but provide them to Father.

On May 15, 2012, the court sustained all counts in the petition, and ordered the child placed with the maternal grandparents. The court provided reunification services to Father, but denied services to Mother. Father's case plan included, among other things, a domestic violence program and parenting education.<sup>3</sup>

***B. Father's Failure to Comply with Reunification Services***

On November 13, 2012, DCFS filed a six-month status review report stating that Father had not met with the case social worker, and had not begun his services. Father told DCFS he was not able to comply with his services because he was on the road due to his job, and had only visited the child once during the reporting period. Father also told DCFS he did not believe he had done anything wrong with Tyler, and did not understand why the court was holding him responsible.

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<sup>3</sup> In a prior appeal, Father challenged the court's jurisdictional findings and its disposition order. We found there was no evidentiary basis for jurisdiction under section 300, subdivision (a), but sustained jurisdiction under subdivision (b): "There was evidence that [Father] had made an inappropriate plan for the care of Tyler [] and that he failed to protect him from harm. Pamela[], with whom Tyler [] had been left, exposed [the child] to domestic violence, used drugs, had serious and untreated mental health problems, and had a firearm to which Tyler [] had access in her home. There was also evidence that T.M. had abused Tyler [] by hitting him with a belt. . . . [Thus,] at least two of the jurisdictional findings involving [Father's] conduct were supported by the evidence." (*In re Tyler W.* (Feb. 26, 2013, No. B241290 [nonpub. opn.]) We also affirmed the juvenile court's disposition order.



DCFS reported that Tyler had been diagnosed with Asperger Disorder, Attention Deficit Hyperactivity Disorder (ADHD) and Post-traumatic Stress Disorder (PTSD). Tyler's maternal grandparents were facilitating several forms of treatment for the child, including group therapy, individual therapy and psychiatric counseling. Janice informed DCFS that Tyler had been suspended from school in September for choking another student. He had claimed that a voice told him to do it. She also reported that Tyler was "very aggressive and disruptive in the classroom," and that grandfather attended school with Tyler two to three days a week to try to keep him calm. Both grandparents were attending a support group for caregivers of persons with mental illness. At the six-month review hearing, the court left Tyler placed with the grandparents, and continued reunification services for Father.

On May 2, 2013, DCFS filed a 12-month status review report. During the review period, Tyler was hospitalized and assessed to be a threat to others after having chased a child with scissors. DCFS reported that Father still had not initiated services, and had minimal contact with the department or the child. On April 30, 2012, Father informed DCFS he could not take care of Tyler, and wanted him to remain placed with the grandparents. DCFS recommended that the court terminate Father's reunification services.

At the 12-month review hearing, the court found Father was not in compliance with the case plan, terminated reunification services and scheduled a section 366.26 permanency hearing. The court did, however, allow Father to continue having monitored visits and telephonic contact with the child.

### ***C. Permanency Planning***

On September 17, 2013, DCFS filed a section 366.26 report stating that the grandparents were not willing to serve as Tyler's legal guardians unless his behavior improved. Janice expressed concern that as Tyler grew stronger, she and the maternal grandfather would not be able to defend themselves against his aggressive behavior. The grandparents requested that DCFS continue to provide services to Tyler, and continue to monitor him.

DCFS reported that Tyler's behavior was "unchanged." He remained "hyperactive," and was often "out of control and aggressive in nature." The staff at Tyler's school reported that he had been throwing things at staff and slamming doors. Father had not visited Tyler during the reporting period. DCFS recommended that in light of the grandparents' decision that they needed more time to determine whether they were willing to serve as Tyler's legal guardians, the court should take the section 366.26 hearing off calendar, and initiate a permanent plan living arrangement. The court agreed to the recommendation, and scheduled a permanency plan review hearing.

In May of 2014, DCFS provided its first permanency plan review report, which indicated that Tyler continued to exhibit numerous behavioral issues. In January of 2014, the grandparents had requested that he be removed from their custody, and placed in a higher level of care. Pursuant to the request, Tyler was placed at the Five Acres residential home, and was enrolled in a new school. Tyler continued to participate in group therapy, individual counseling and psychiatric services. He was also taking four types of medication to address his mental health issues. Five Acres informed DCFS that Tyler had "high

needs and anyone who takes care of him should be able and around to make sure those needs are met.” [Sic.] Father visited the child once during the reporting period. DCFS informed the court that the child’s permanency plan was to return to the grandparents’ home once his behavior stabilized.

In November of 2014, DCFS provided a second permanency plan review report stating that no major incidents had occurred during the reporting period. DCFS indicated that Tyler, then nine-years old, had made some progress in his behavior, but still needed substantial prompting before doing simple tasks such as showering or picking up toys. In October of 2014, Father contacted DCFS and asked how he could regain custody of the child. DCFS advised Father he should speak to his attorney about the possibility of pursuing a section 388 petition. Father visited Tyler a couple of times each month during the review period, and called him every week.

In May of 2015, DCFS filed its third permanency plan status review report. During the reporting period, Five Acres informed DCFS that Tyler’s “physical aggression had increased toward peers and staff,” and recommended that Tyler be placed “in a specialized school for autistic children.” Father’s visits with Tyler during the review period had been “inconsistent.” DCFS attempted to meet with Father regarding Tyler’s permanent plan, but he told the department he was out of town.

In November of 2015, DCFS filed its fourth permanency plan status review report. During the review period, Father had married Valorie F. and relocated to Plano, Texas. Father told DCFS he had enrolled in an online parenting class, and would provide the department more information about the program. As of November 2015, however, Father had still not provided any

information about the class. Tyler's teacher reported that the child continued to have tantrums "almost daily." He also experienced "flashbacks of what happened to him when he lived with his dad," but would not tell the staff what the flashbacks were about. The school also reported that Tyler frequently "r[an] out of class without permission," and threw items.

In May of 2016, DCFS submitted its fifth permanency plan status report, which stated that Tyler had been suspended from his school in December of 2015 after threatening teachers and staff. According to the school, Tyler had also become violent with a teacher's aide, hitting her several times before leaving the classroom without permission. As a result of this conduct, Tyler was transferred to a new school, where he continued to engage in "aggressive and self-injurious behaviors," resulting in additional suspensions and a transfer to another school.

Tyler's current school reported that, as of April of 2016, his behavior had improved, and he was now capable of following instructions. Tyler continued to take medication and participate in counseling to address his "high-distractibility and . . . his psychosis-like symptoms." DCFS informed the court that the department believed Tyler was ready to transfer from Five Acres into a "a lower level of care," and was searching for an alternate placement.

Father visited Tyler twice during the reporting period. Both visits were reported to be "good and appropriate." Five Acres was also working to obtain "Skype" so that Father could conduct video chats with the child. Father informed DCFS he wanted to reunify with Tyler, and did not understand why the child had been detained. On May 27, 2016, Father told the department he wanted the court to reinstate his family

reunifications services and order an evaluation of his residence in Texas pursuant to the Interstate Compact for the Placement of Children (ICPC). According to DCFS, however, Tyler's permanent plan was to "find him a permanent home" through adoption or intensive treatment foster care.

In November of 2016, DCFS submitted its sixth permanency plan status review report, which stated Tyler had recently undergone a psychological evaluation. The evaluator found that Tyler exhibited "substantial autistic-like behaviors," and had significant handicaps "in the areas of communication, daily living skills and self-direction." The evaluator noted that Tyler's symptoms became more pronounced when he was "in an unstructured environment," and recommended that he remain in "appropriate residential setting such as [the] Five Acres program." The evaluator also believed Tyler should continue to receive special educational services "geared toward both emotional disturbances and autism." DCFS further reported, however, that Tyler's behavior appeared to be gradually improving.

DCFS confirmed that Father had enrolled in a parenting class, and attended several sessions. In October of 2016, however, the program administrator informed DCFS she was forced to discontinue Father's classes because he had not paid the school. Father visited Tyler in September of 2016, and continued to assert that he wanted to reunify with the child.

In May of 2017, DCFS provided a seventh permanency plan status report stating that Tyler had been moved from the Five Acres residential program into an intensive treatment foster care placement. The foster mother told DCFS she was willing to serve as a long-term placement for the child, and reported that he was

currently stable. Father visited the child in November of 2016 and February of 2017; both visits were appropriate. Father also continued to have monitored phone contact with Tyler. The monitor reported that Tyler was disengaged during the calls, and had initiated little conversation. DCFS stated that it was working with Tyler's new school, the maternal grandparents, the foster parent and Five Acres to ensure his academic needs were being met.

#### ***D. Father's Section 388 Petition***

##### *1. Summary of Father's petition*

On May 17, 2017, Father filed a section 388 petition requesting that the juvenile court “[r]einstat[e] [his] reunification services and/or grant . . . unmonitored visits and/or return [Tyler] to [his] custody and/or order an ICPC for [Father's] home in Texas.” The petition asserted that Father was now capable of providing Tyler a “stable and loving home,” and that it was in the child's best interest to “get out of the foster care system and reside with his family.” The petition further asserted that the changes to the court's prior orders were justified because Father had “complet[ed] a parenting program”; “significantly compl[ied] with a domestic violence program”; and married a “safe, stable loving wife in Texas who [would be] available to care for Tyler while [he was] working.”

Father provided a declaration in support of the petition asserting that he had previously failed to comply with his case plan because of his work schedule. The declaration also stated that Father was aware Tyler had Asperger Disorder, ADHD and Post-traumatic Stress Disorder, and asserted he was willing and able to care for his son. The declaration confirmed Father had

completed a parenting program, was enrolled in a domestic violence program and had recently married a woman who would “be available to care for Tyler.”

*2. DCFS’s report regarding the section 388 petition*

On July 18, 2017, DCFS submitted a report in response to Father’s petition. During a phone interview, Father told DCFS he had tried to visit Tyler as often as he could, but his work schedule prevented him from regular visitation. Father asserted he had not visited Tyler at his new foster care placement because DCFS had not given him the foster parent’s contact information. The department, however, asserted that it had provided Father with the information.

Father told DCFS he had “done some programs, but was unable to provide any [further] information as he was not home at the time of the interview.” Father requested that DCFS contact him the next day because it was late in Texas. The social worker gave Father his personal cell phone number, but Father never called back.

DCFS expressed concern that Father did not understand the extent of Tyler’s needs because “he doesn’t keep in touch regularly.” DCFS noted that Tyler was currently part of the “Regional Center and gets therapy and takes medication but Father is not trained to deal with Tyler’s issues nor is his wife.” DCFS believed Father needed to attend “parenting [classes] specializing in kids with special needs,” and should have been participating in “conjoint therapy with Tyler or at least familiarize[ing] himself with Tyler’s special needs.” Although DCFS acknowledged Father had taken some steps to address his case plan, the department believed he remained “very unfamiliar with Tyler’s special needs,” and had not demonstrated that he

knew “how to care for [the child] on a consistent, regular and daily basis.”

In its assessment and evaluation, DCFS concluded Father had not “participated in appropriate counseling to address the case issues as well as the child’s special needs.” According to DCFS, Tyler still required a “structured environment as well as constant attention and prompting of the adults in his life.” DCFS recommended that given Father’s prior failure to comply with his case plan, and his relative absence from the child’s life, the court should deny the petition.

### *3. Hearing on the section 388 petition*

On August 11, 2017, the juvenile court held a hearing on the section 388 petition. Tyler’s counsel called Father’s wife Valorie to testify. Valorie stated that she and Father lived in Texas, and that she taught “medical assistance at Remington College 20 hours a week.” Valorie said she had attended four monitored visits with Tyler, and had also communicated with him through video chats. The topics they discussed included what Tyler was working on at school, his toys and what he liked to do. Valorie had never been alone with the child, had not exchanged any written communication with him and had never spoken to the maternal grandparents. When asked whether she had observed Tyler engage in any behavior that was “out of the ordinary,” Valorie stated that Tyler was “a little hyper, that’s about it.”

Valorie also testified that she knew Tyler had been diagnosed with Autism, ADHD, Asperger Disorder and PTSD. When asked whether she understood what “Autism” meant, Valorie responded that “it is a characteristic in certain behaviors. Autism does not really necessarily mean . . . a learning



disability.” Valorie also stated that she was “not . . . familiar with what Aspergers actually is.” Valorie was also unaware that Tyler had become physically violent with school staff as recently as December of 2015, that he suffered anxiety from noises or that he had frequent tantrums. She further stated that she was “not aware of what kind of special education he [would] need,” and was not “familiar with any of the educational services [he] currently receive[d].” No other witnesses testified at the hearing.

At closing argument, Father’s counsel argued that the evidence showed Father had made efforts to comply with the case plan, and was committed to “doing the programs the court ordered back in 2012.” Counsel further argued that Father had proved he now had “an exceedingly appropriate plan with his current wife who is aware of Tyler’s special needs and is [a nurse].” Counsel asserted that it was in Tyler’s best interest to live with his Father, rather than in foster care.

Tyler’s counsel expressed concern that Father and Valorie did not appear to understand the extent of Tyler’s needs, and would need “serious training” before they could properly care for the child. Counsel noted that Tyler was currently placed in a specially-licensed “Intensive Treatment Foster Care.” Counsel also noted, however, that the foster parent was not offering Tyler a permanent plan, and suggested that the court should consider reinstating Father’s reunification services. Counsel explained that she had conducted some online research, and determined that appropriate services would likely be available to Father in Texas.

In response to the recommendation of Tyler’s counsel, the juvenile court stated: “[I]f you believe that there’s these services that would be available to [Father and Valorie], why can’t we just

coordinate with you and [Father's counsel] to get a . . . joint letter out there to him? And it would be incumbent upon him to get involved in those things. Let's not forget something: six months is all he would get. . . . Wouldn't it make more sense that we see a change in circumstances and that we could say that services have been done; they are ready to deal with these things and then we come back and reassess?" Tyler's counsel agreed that the court's proposal was appropriate.

The juvenile court then explained to the parties that Father had not established compliance with his case plan, and had not shown it was currently in the best interests of Tyler to reinstate reunification services. The court clarified, however, that it would "reconsider it in the future if the father and his wife were to do those programs but not at this time." The court then addressed Father, directly, stating: "I'm sorry, but I don't feel comfortable with granting the petition at this time. The circumstances have not changed significantly to demonstrate that you are ready to have the child or have the services for the child or that it's in the best interest of the child to put this on a six-month track. You have to understand from what has been represented by the minor's counsel, yes, there are programs in your area that could be helpful in training you and training [Valorie] on what you need to learn in order to take care of the many, many concerns that we have for your son. But putting it on a six-month track and you not completing it in six months would just mean that at the end, you wouldn't get what you want and that's Tyler returned."

The court also explained to Father that DCFS and Tyler's counsel had "agreed to coordinate with [Father's] counsel . . . in a joint letter to you and [Valorie] about what services are available in your area. And you would be able to get into those programs. It would not be ordered by the court. . . . I'm going to . . . ask them to coordinate with the social worker and county counsel to see that the programs that are in your area would be approved of by [DCFS] so we can get you in the programs that you would need in order to take care of [Tyler] so you could get him back in Texas. But right now the circumstances have not changed enough to order six months of services when we don't know whether or not the services can get started right away or . . . that other things that need to be put into place to address this young man's serious needs would be available. So I'm going to deny your 388 without prejudice. That means if you want to bring it again at another time after you've done these programs, then we will reconsider it, but we won't at this time."

## **DISCUSSION**

### ***A. Summary of Applicable Law and Standard of Review***

"Section 388 allows a parent or other person with an interest in a dependent child to petition the juvenile court to change, modify, or set aside any previous order. (§ 388, subd. (a).) 'Section 388 provides the 'escape mechanism' that . . . must be built into the process to allow the court to consider new information.' [Citations.] The petitioner has the burden of showing by a preponderance of the evidence (1) that there is new evidence or a change of circumstances and (2) that the proposed modification would be in the best interests of the child.

[Citations.] That is, ‘[i]t is not enough for [the petitioner] to show just a genuine change of circumstances under the statute. The [petitioner] must show that the undoing of the prior order would be in the best interests of the child. [Citation.]’ [Citation.] Furthermore, the petitioner must show changed, not changing, circumstances. [Citation.] The change of circumstances or new evidence ‘must be of such significant nature that it requires a setting aside or modification of the challenged prior order.’ [Citation.]”

“In considering whether the petitioner has made the requisite showing, the juvenile court may consider the entire factual and procedural history of the case. [Citation.] The court may consider factors such as the seriousness of the reason leading to the child’s removal, the reason the problem was not resolved, the passage of time since the child’s removal, the relative strength of the bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner. [Citation.] In assessing the best interests of the child, ‘a primary consideration . . . is the goal of assuring stability and continuity.’ [Citation.]” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615-616 (*Mickel O.*); see also *In re Marilyn H.* (1993) 5 Cal.4th 295, 309 [“Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability”].) “After the termination of reunification services, . . . there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).

“We review the juvenile court’s denial of a section 388 petition for an abuse of discretion. [Citation.] The court ‘exceeds the limits of legal discretion by making an arbitrary, capricious or patently absurd determination.’ [Citation.]” (*Mickel O.*, *supra*, 197 Cal.App.4th at p. 616.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citation.] [Citation.]” (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Under this highly deferential standard of review, “[i]t is rare that the denial of a section 388 motion merits reversal as an abuse of discretion.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.)

***B. The Trial Court’s Denial of Father’s Petition Was Not an Abuse of Discretion***

Father contends the “juvenile court abused its discretion” because the evidence submitted in support of the section 388 petition showed “a material change of circumstances since . . . his services [were terminated],” and “proved that the relief he sought would promote Tyler’s best interests and improve the child’s prospects for permanency.”

Father argues the evidence established three “significant . . . change[s] in the family’s circumstances”: (1) Father had “substantially compl[ied] with his reunification case plan”; (2) Father “ameliorat[ed] [his] child care issues” by marrying a spouse who could care for Tyler while he was traveling; and (3) Tyler’s behavior had stabilized, thus improving Father’s ability “to care for and protect his son.” Although the record contains evidence that Father’s situation was improving,

the juvenile court could rationally infer that none of the factors Father identified constitutes “a changed . . . circumstance.” (*Mickel O.*, *supra*, 197 Cal.App.4th at pp. 615-616.)

With respect to Father’s compliance with his case plan, the materials he submitted in support of his petition show only that he completed one parenting class, and had enrolled in a domestic violence class. The record contains no evidence that these actions constituted “substantial compliance” with his case plan. To the contrary, DCFS’s report on the section 388 petition found Father had not demonstrated significant progress on his case plan, and had failed to provide any information regarding the nature of the classes he had enrolled in. The juvenile court could reasonably conclude that although Father’s evidence suggested he had taken some initial steps to address his case plan, his limited progress did not qualify as a significant change in circumstance.

Similarly, although Father argues his marriage to Valorie resolved his child care issues, the record contains conflicting evidence whether Valorie was capable of addressing Tyler’s specialized needs. Valorie’s testimony showed she had only met Tyler a couple of times, and that she had never been alone with him. Valorie’s statements also showed she was unfamiliar with Tyler’s symptoms, and had little understanding of his mental conditions. Moreover, Valorie admitted she had not researched whether the services that Tyler needed would be available to him in the area where she and Father resided. DCFS expressed concern that Father had not shown Valorie understood the level of care that Tyler required, or that she had sufficient training to address his needs. The court could reasonably infer from such evidence that Father had not established that Valorie’s presence in the home was sufficient to resolve his child care issue.

The court could likewise infer that the recent improvements in Tyler’s behavior did not qualify as a significant change in circumstance. Although several of the DCFS reports contain language indicating that Tyler’s behavior appeared to be improving and stabilizing, the department’s report on the section 388 petition clarified that he still required a “structured environment as well as constant attention and prompting of the adults in his life.” The report also indicated that Tyler was still participating in multiple forms of therapy, and was receiving psychiatric services. Moreover, Tyler’s most recent mental evaluation had concluded that he exhibited “substantial autistic-like behaviors,” and that his symptoms were accentuated when he was in an unstructured environment. The evaluation further found that Tyler had significant handicaps “in the areas of communication, daily living skills and self-direction.” The evaluator recommended that Tyler be placed in an “appropriate residential setting,” and continue to receive special educational services “geared toward both emotional disturbances and autism.” This evidence is sufficient to support the court’s finding that the gradual improvement in Tyler’s condition did not qualify as a significant change in circumstance. In sum, we find no basis for Father’s assertion that the juvenile court acted arbitrarily in concluding that Father had failed to prove any actual change in circumstance.

Father has also failed to show that the juvenile court “exceed[ed] the bounds of reason” in concluding that reinstating reunification services would not currently be in the child’s best interests. DCFS’s report on Father’s petition indicated that he had minimal involvement in Tyler’s life during the preceding five-year period. Father visited the child sporadically, and his

visits never advanced beyond monitored. Father had never participated in any type of therapy with Tyler; he presented no evidence that he understood the amount or type of care that Tyler required; and he presented no evidence that he had obtained training or services related to special needs children. The court could reasonably conclude from this evidence that reinstating reunification services was not in Tyler's best interests because Father had made no showing those services were likely to succeed.

The court also emphasized that it was not foreclosing the possibility of reunification services in the future, and invited Father to re-file his petition once he was able to obtain additional services. The court directed DCFS and the attorneys for Tyler and Father to help him identify services in Texas that would enable him to reunify. Given the paramount interest in providing the child "permanency and stability" at this stage of the proceedings (see *Stephanie M.*, *supra*, 7 Cal.4th at p. 317 [after termination of reunification services, the "the focus shifts to the needs of the child for permanency and stability"]), we find no abuse of discretion in the court's conclusion that reinstating reunification services would not be in Tyler's best interests unless and until Father voluntarily participated in additional services, and was able to make a stronger showing that he was willing and able to care for the child. (Cf. *In re Josiah Z.* (2005) 36 Cal.4th 664, 674 ["[t]here is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current "home," under the care of his parents or foster parents, especially when such uncertainty is prolonged"].)



## **DISPOSITION**

The court's order is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.