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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re P.S., a Person Coming Under
the Juvenile Cour Law.

B279020
(Los Angeles County
Super. Ct. No. CK77145)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VINCENT S.,

Defendant;

EDDIE S.,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Veronica McBeth, Judge. (Retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Eddie N. Solomon, in pro. per., for Appellant.

No appearance for Plaintiff and Respondent.

Eddie S., the paternal grandfather of P.S., appeals from the juvenile court's denial of his petition under Welfare and Institutions Code¹ section 388 (388 petition), requesting that P.S. be placed with him and his wife (paternal grandparents). We affirm.

BACKGROUND

In 2016, in an unpublished opinion, we dismissed an appeal by P.S.'s father, Vincent S. (father) from the December 9, 2015 denial of father's earlier 388 petition filed on October 20, 2015. (*In re P.S.* (Nov. 18, 2016, B269672) [nonpub. opn.] at pp. 2, 3, 5.) Father argued that the juvenile court abused its discretion when it failed to make an independent evaluation under section 361.3. before denying his 388 petition request that P.S. be removed from foster care and placed with the paternal grandparents. We concluded that father did not have standing to appeal because his reunification services had been terminated before he filed his 388 petition. We distinguished *In re*

¹ All further statutory references are to the Welfare and Institutions Code.

Isabella G. (2016) 246 Cal.App.4th 708, where the father and paternal grandparents joined in an appeal of the denial of the grandparents' section 388 petition requesting placement filed after father's parental rights were terminated: "As we stated above, the paternal grandparents never requested placement, did not file a section 388 petition, and are not parties to this appeal." (*In re P.S.* (Nov. 18, 2016, B269672) [nonpub. opn.] at p. 10.)

While father's appeal was pending, on August 31, 2016 paternal grandfather Eddie S. filed a 388 petition asking the court to "[d]etermine guardianship of minor, appoint grandparents" and place P.S. with the paternal grandparents. At a hearing on September 19, 2016, minor's counsel opposed the request for placement, and the Department of Children and Family Services (DCFS) did not take a position. The juvenile court denied Eddie S.'s first 388 petition as not in the best interest of P.S. P.S. was 18 months old, had special needs, and had been with the foster parents since she was one month old. Although the court had ordered visitation two to three times a week, the paternal grandparents had been visiting only once a week.

Eddie S. filed this appeal in propria persona. Father is not a party. Eddie S. requested disclosure of the juvenile case file. The juvenile court granted release of his first 388 petition dated August 31, 2016, the minute order for September 19, 2016, and his notice of appeal, for a total of

11 pages.² His opening brief argues that the juvenile court failed to apply the statutory preference for placement of P.S. with relatives, and requests a “remand[] for an appropriate inquiry whether the grandparents were denied preferred placement.” (Capitalization omitted.) In a letter to this court, DCFS explained it did not file a respondent’s brief because it did not oppose the granting of Eddie S.’s first 388 petition at the September 19, 2016 hearing.

DISCUSSION

Eddie S. has provided an inadequate record for our review of his first 388 petition. The party seeking modification of a juvenile court order under section 388 must show by a preponderance of the evidence that there has been a substantial change in circumstances regarding the child’s welfare, and the proposed modification must be in the child’s best interests. (*In re Heraclio A.* (1996) 42 Cal.App.4th 569, 577; *In re S.R.* (2009) 173 Cal.App.4th 864, 870.) Whether an order should be modified is within the discretion of the juvenile court, and we will not disturb the court’s determination unless an abuse of discretion is clearly established.

On appeal we have no record of the dependency proceedings beyond 11 pages comprising Eddie S.’s first 388 petition and the minute order denying it, along with the reporter’s transcript of the hearing. We are unable to

² Also in the appellate record is the 15-page reporter’s transcript of the September 19, 2016 hearing.

determine from those few pages whether the juvenile court abused its discretion in deciding that there had not been a substantial change in circumstances regarding P.S.'s welfare, or that placing P.S. with paternal grandparents would be in P.S.'s best interests. An appellant has the affirmative duty to demonstrate error on appeal by reference to an adequate record. (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) "When the appellant fails to provide an adequate record of the challenged proceedings, we must presume that the appealed judgment or order is correct, and on that basis, affirm." (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 644.)³

³ DCFS has advised us that Eddie S. filed a second 388 petition. The juvenile court denied his second 388 petition after a hearing on November 14, 2017, and ordered a permanent plan of adoption by the foster parents. The court also ordered DCFS to speak with the paternal grandparents and the prospective adoptive parents regarding possible visitation after adoption. On November 21, 2017, P.S.'s counsel filed a notice of intent to file writ petition to review the placement order. On the court's own motion, we take judicial notice of the juvenile court's minute order of November 14, 2017, and the notice of intent to file writ petition filed November 21, 2017. Eddie S.'s second 388 petition is not before us on this appeal.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.*

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