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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ANDREA B., a Person Coming Under
the Juvenile Court Law.

B234551
(Consolidated with B236585)
(Los Angeles County
Super. Ct. No. CK69784)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.H.,

Defendant and Appellant.

APPEAL from findings and orders of the Superior Court of Los Angeles County.
Donna Levin, Juvenile Court Referee. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

P.H. (grandmother), the paternal grandmother of Andrea B. (Andrea, born Nov. 2006), challenges the juvenile court's findings and orders sustaining three counts of a four-count Welfare and Institutions Code section 387 petition,¹ removing Andrea from her custody, denying her reunification services, and terminating her legal guardianship.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Family

Andrea's parents are S.M. (mother) and Andre B. (father). They are not parties to this appeal. The grandmother is father's mother.

Section 300 Petition and Proceedings

On August 30, 2007, the Department of Children and Family Services (DCFS) removed Andrea, who was born with congenital abnormalities, from her parents' custody. She was placed with her grandmother on October 17, 2007.

For the six-month review hearing, DCFS reported that Andrea was an active and engaging young child who appeared to be thriving in her grandmother's care. The social worker observed that Andrea had a close bond with her grandmother and paternal uncle, Maurice B. (uncle). Moreover, the grandmother was attending to Andrea's medical and developmental needs, including multiple cardiac surgeries and taking her to the Regional Center for services.

The grandmother hoped that father would one day be able to care for Andrea and, for that reason, did not want to pursue adoption. DCFS therefore recommended that the grandmother become Andrea's legal guardian. On May 18, 2009, the juvenile court appointed the grandmother as Andrea's legal guardian and terminated dependency jurisdiction.

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

Section 387 Petition and Hearing

On January 7, 2011, DCFS received a referral alleging general neglect of Andrea by the grandmother. The referral indicated that the grandmother had called law enforcement and reported that the uncle was going to kill her and had broken a window at the home. Deputy Sheriff Baker responded to the grandmother's home and found it filthy and unsanitary, with trash and food wrappers on the floor throughout. There was broken furniture, and the sofas were dirty. The kitchen wall and cabinets were dirty. The kitchen floor was dirty, with broken glass everywhere. Rotten food was found on the kitchen counter. Andrea was sleeping on a dirty mattress, and the child was wearing a white T-shirt that was so dirty it appeared to be black in color.

Emergency response social worker Tanya Francis (Francis) interviewed Deputy Baker, who stated that he had responded to a call that the uncle had threatened to harm the grandmother. When he arrived at the home, he observed Andrea sleeping on a filthy mattress. There was food and trash next to the mattress and the home did not have a refrigerator. Deputy Baker also found a marijuana pipe in the home; he learned that a resident in the home was on probation for a drug conviction.

Francis spoke to the grandmother by telephone. She explained that the uncle had come home late in the night and began banging on the door, prompting her to call the police. She stated that her mortgage went up to \$3,504 per month and she could not afford it. She had shipped some of her furniture to Mississippi and put the rest in the garage. The mattress on which Andrea was found sleeping had been found by the uncle on the street. The grandmother stated that she was involved in an automobile accident 10 years ago and sustained brain damage.

Francis went to the home and met with the grandmother and Andrea. Andrea appeared to be hyperactive and delayed in speech. Francis observed marks on Andrea's back. The grandmother said that Andrea had an appointment with the VIP Clinic the following Monday. The grandmother explained that Andrea had undergone heart surgery when she was nine months old. Although she was not taking any medication, she had regular check-ups every six months.

The grandmother then informed the social worker that the police were harassing her because they were looking for her daughter, who was on probation. She had no money to go to a hotel and she was waiting for her sister to send her some money so that she could go to Mississippi.

Francis inspected the home and found two rooms with no furniture. There was a mattress in one bedroom that was dirty. There was food on the floor next to the mattress. There was a gallon of milk on a shelf. The bathroom was dirty, with a brown ring in the tub and cut hair on the shower floor. There was a dirty couch in the living room and cigarette butts on the floor. There was trash on the kitchen floor. There was no refrigerator. It appeared as if the home had been abandoned.

Francis believed that the home's condition was hazardous and immediately threatening to Andrea's health and that the grandmother's emotional instability seriously impaired her ability to supervise, protect, or care for the child. Thus, Francis removed Andrea from the grandmother's custody and placed the child in a foster home.

Based on the foregoing, DCFS filed a section 387 petition, alleging that a drug pipe had been found in the grandmother's home within Andrea's reach; the home was found in a filthy and unsanitary condition with old food, cigarette butts and trash scattered throughout the house and a dirty couch in the living room; and a filthy mattress on which Andrea slept.

Francis asked that the juvenile court order a mental health/developmental assessment of Andrea and a multidisciplinary assessment of the grandmother.

The juvenile court found that DCFS had made reasonable efforts to prevent the removal and that there were no services available to prevent further detention. The juvenile court placed Andrea in the temporary care of DCFS pending disposition. It ordered monitored visits for the grandmother and Andrea's parents. It further ordered that Andrea receive a Regional Center evaluation and a Public Health Nurse (PHN) assessment and that the grandmother receive an up-front assessment.

The matter was set for a pretrial resolution conference on February 14, 2011.

Last Minute Information for the Court

On February 9, 2011, dependency investigator Darlene Moore (Moore) interviewed the grandmother at the DCFS office. The grandmother reported that she had difficulty with short-term memory because she had been involved in a car accident in 1996. She had been diagnosed with short-term amnesia. She stated that she wanted to continue being Andrea's legal guardian and was willing to participate in any court-ordered programs.

Regarding the condition of the home, the grandmother explained that half of her furniture had been shipped to Mississippi and the other half was stored in her garage. She said that her home had been without any furniture, refrigerator, or stove for three weeks; they would order out for food every day or a friend would take them to the store to get food. In the mornings, the uncle would walk to the store and buy Andrea cereal and milk for breakfast. The grandmother denied that the home was filthy and that Andrea's shirt was dirty.

As for Andrea's heart condition, Andrea had undergone two heart surgeries. After her second surgery, the grandmother had been told that Andrea needed to be seen by the doctor every six weeks. She could not remember Andrea's last appointment. She explained that she could not recall Andrea's appointments because her short-term memory was impaired; instead, she depended on the uncle to remember the appointments for her.

Regarding the drug pipe, the grandmother explained that it belonged to someone named "Tommy." Tommy only smoked tobacco out of it. The grandmother denied using drugs.

Moore then interviewed Andrea, who was able to answer simple questions. However, Moore could not obtain any statement from Andrea regarding the allegations.

Andrea's foster mother reported that Andrea had made some improvement with her speech and was no longer mumbling her words. She was not potty trained and was unable to say when she needed to use the bathroom or articulate her needs. The foster mother also reported that the grandmother had telephoned Andrea every day since

February 6, 2011, and, although she would tell Andrea that she was coming to visit, she never did.

Moore recommended that Andrea remain in foster care, that family reunification services be provided to the grandmother, and that the grandmother participate in parenting education classes and individual counseling.

Jurisdiction/Disposition Report

DCFS provided information from PHN Patricia Nance (Nance). Nance conducted an assessment of Andrea's health and development on January 16, 2011. Her speech appeared to be delayed. The child was observed to occasionally stumble and fall. Nance recommended that Andrea be reassessed for Regional Center services.

When Andrea's diaper was changed during the assessment, she pointed to her public and buttocks areas and stated, "Andre [father] spanked me." A forensic exam conducted that same day did not confirm or rule out sexual abuse.

Interim Review Report

On March 8, 2011, Andrea's foster mother reported that Andrea said that father had touched her "privates" and "opened it up." The foster mother tried to get Andrea to tell the social worker what had happened by asking her leading questions, like "Didn't [father] touch your privates?" While Andrea responded in the affirmative, the social worker instructed the foster mother to stop questioning the child.

At Andrea's most recent cardiology appointment, it was determined that a heart valve still leaked and further surgery might be necessary. Andrea was given a 24-hour heart monitor. In a subsequent letter from the cardiologist, the doctor indicated that Andrea required follow-up appointments every three to six months; the grandmother had failed to bring Andrea for her appointments on May 12, 2008, March 16, 2009, December 14, 2009, and January 18, 2010.

On April 8, 2011, the grandmother advised the social worker that she and father were going to Mississippi and would be returning on May 11, 2011. During that conversation, the grandmother advised the social worker that she and father had not been truthful to the social worker about where mother and Andrea's half-sibling, Aaron M.

(Aaron), were staying. The grandmother admitted that they had been staying with her and father and sometimes with mother's godmother. The grandmother informed the social worker that Aaron was unkempt; she said that she would notify the social worker of mother and Aaron's whereabouts so DCFS could "do [its] job." On April 20, 2011, the social worker learned that mother and Aaron had accompanied the grandmother and father to Mississippi and would not be returning until May 11, 2011.

Because of her trip to Mississippi, the grandmother had not participated in the court-ordered assessment of her emotional and cognitive delays. However, the grandmother informed the social worker that she was willing to be assessed upon her return.

In the meantime, Andrea was seen by the Regional Center for a psychological testing/assessment on April 12, 2011. Regarding Andrea's past Regional Center services, DCFS learned that a psychological testing/assessment appointment was scheduled on four separate occasions and that the grandmother had failed to take Andrea to any of them. Thus, Andrea's case was closed and Andrea had not received Regional Center services. Despite advice that the grandmother take Andrea to a preschool for an evaluation, the grandmother had failed to do that as well.

At the same time, Andrea's sibling, Ariel M. (Ariel), had been removed from her parents' custody and a hearing on her section 300 petition was set for June 7, 2011. DCFS was searching for a placement where Andrea and Ariel could be placed together. Andrea could not be placed with Ariel in Ariel's current foster home because Ariel's foster parent was not approved for Andrea's special needs and because she had no room for Andrea.

First Amended Section 387 Petition

On May 2, 2011, DCFS filed a first amended section 387 petition, adding a count alleging that the grandmother had failed to obtain the necessary and timely medical follow-up appointments for Andrea and a count alleging that the grandmother had failed to protect Andrea from sexual abuse by father.

Last Minute Information for the Court

On May 9, 2011, the Regional Center informed DCFS that Andrea had been diagnosed with mild mental retardation and was eligible for services.

Moore interviewed Andrea on May 31, 2011. She was unable to tell the difference between a lie and the truth. Andrea said that father, the uncle, mother, and Aaron lived with her at the grandmother's house. Moore asked Andrea to point to her "private parts" and she immediately pointed to her vaginal area and said, "[r]ight there . . . and my butt!" When asked if anyone had ever touched her private parts, Andrea replied, "Yes . . . [Father]." Andrea said that she would run to the bathroom when it happened. Andrea was shown drawings of a boy and a girl and she identified their private areas. When asked if father was a boy or a girl, Andrea said that he was a boy. Moore then asked her if father had ever touched his private part to her private part, and Andrea responded, "Yes . . . [Father] touched my private and [uncle] touched my legs with a belt." She then began drawing pictures of what she meant by private-to-private touching. Andrea's foster mother told Moore that about a week earlier, she found Andrea masturbating in a bathtub and Andrea told her that father had "hurt [her] down there" and that father had "put his mouth down there."

Moore contacted father, who was still in Mississippi. He denied sexually abusing Andrea or living with the grandmother. He accused the foster mother of coaching Andrea of what to say.

The grandmother said that the allegation that father had sexually abused Andrea was a lie and that Andrea had never told her that someone hurt her private area. Regarding the alleged medical neglect, the grandmother explained that she did not have transportation. Although she said that the doctor's office told her that she needed to call Long Beach Memorial Hospital to set up the appointments, she never did.

The grandmother stated that she had not obtained a mental health evaluation because most of the physicians she had contacted would not take Medi-Cal insurance. It was the grandmother's plan to move to Mississippi to live permanently.

Mother informed Moore that Andrea had told her a few times that her private area hurt and that the uncle was the one who had hurt her. Later, mother asked Moore to keep the information confidential because she did not want any problems with the grandmother.

June 7, 2011, Hearing

At the hearing, the juvenile court accepted the various DCFS reports into evidence. Then the grandmother testified. She said that Andrea's doctor told her that the child needed follow-up appointments every six months. In accordance with his instructions, the grandmother brought Andrea to the doctor every six months; she never canceled an appointment but she could not remember the dates of the appointments.

When the police went to her house on January 7, 2011, the rooms were empty. Half of the furniture was in the garage and the other half had been sent to Mississippi. There was a box spring, a mattress, and a television in the master bedroom. There had been no furniture for about a month. The grandmother had been planning to move to Mississippi on January 9, 2011. The grandmother said that she had not seen a drug pipe in her home. She had a cousin who had a metal pipe that he used to smoke tobacco, but she claimed that there was no drug pipe.

The grandmother further testified that Andrea had never told her about someone touching her private parts. The grandmother did not believe that anyone had sexually abused Andrea because Andrea was with her at all times, she had never been left with father, and, in any event, father loved the child and would never do such a thing.

The grandmother acknowledged that she suffered from short-term memory loss, but explained that when she wanted to remember something she remembered it. She denied having told the police that she was handicapped and had difficulty caring for others. However, she admitted the brain damage from the car accident affected her balance. She favored her right side and could not lift anything very heavy. She needed help mopping floors because it made her lower back hurt. When asked if she was "handicapped," she admitted being "disabled."

The grandmother denied that she told Francis that the uncle had found the mattress where Andrea slept on the street. She denied that mother and father lived with her. She denied that she failed to take Andrea to four Regional Center assessment/testing intake appointments. She denied saying that Andrea's doctor told her to set up an appointment through Long Beach Memorial Hospital and that she failed to do so.

Finally, the grandmother testified that Andrea got the scars on her body from falling while riding a skateboard.

After entertaining oral argument, the juvenile court sustained counts one and two as pled and counts three and four as amended in the section 387 petition. Although the juvenile court believed that the grandmother had the best of intentions, it found that because of her disabilities and her inability to recognize the true extent of Andrea's needs, it was difficult for her to care for the child. The juvenile court determined that Andrea's placement with the grandmother was no longer effective in the protection or rehabilitation of the child and that she should therefore be removed from the grandmother's home.

Andrea's attorney then argued that the juvenile court had discretion as to whether to grant the grandmother reunification services. The juvenile court responded: "There [are] no [reunification services] in a 387 petition. This is about do we allow a six-month period for the legal guardian to possibly reunify or not so the disposition is really the 387. The disposition is removal from the legal guardian's home. [¶] Now, the question is do we allow the legal guardian to have I guess you could call it 'family reunification?' It is not the same as when a [section] 300 petition is sustained."

Andrea's attorney then argued that it would not be in Andrea's best interest to provide the grandmother with reunification services. The juvenile court noted that DCFS had recommended reunification services. But, county counsel informed the juvenile court that DCFS was going to file a section 388 petition to terminate the guardianship and that she would have it filed by the end of the day. County counsel then stated that she was unaware of any services that could benefit the grandmother because the grandmother suffered from a disability. The juvenile court agreed. Ultimately, county counsel asked

the juvenile court to order no services for the grandmother and advised that DCFS would seek to terminate the guardianship. Andrea's attorney joined in that request.

In response, the grandmother's attorney argued that the grandmother had made every effort to provide Andrea with a safe and appropriate home and desired to continue to do so. The juvenile court stated that it could not think of any services that would help the grandmother, noting that there were deeper problems.

Thereafter, the juvenile court found, by clear and convincing evidence, that the grandmother would not benefit from services. It further found that there was a compelling reason that a section 366.26 hearing would not be in Andrea's best interest and ordered a planned permanent living arrangement. A progress hearing was set for July 11, 2011, and a review hearing was set for December 6, 2011.

DCFS's Section 388 Petition

On June 7, 2011, DCFS filed a section 388 petition, seeking to terminate the grandmother's legal guardianship. The matter was set for hearing on July 11, 2011.

The Grandmother's Appeal

On July 5, 2011, the grandmother timely filed a notice of appeal.

Hearing on DCFS's Section 388 Petition

After numerous continuances, the hearing on the section 388 petition took place on September 22, 2011. On that date, the social worker filed a report responding to several questions posed by the juvenile court. Specifically, regarding Andrea's placement, a former social worker reported that the caretaker spoke negatively about Andrea and often complained about the child's behavior. The current social worker similarly reported that the caretaker complained of Andrea and spoke of her negatively, even as recently as August 2011. However, the social worker indicated that there were no safety concerns and, after the caregiver began receiving Regional Center rates for Andrea, she stopped calling to complain. The social worker also noted that Andrea had asked to go to the caretaker's home in the grandmother's presence.

Furthermore, the DCFS adoptions unit was searching for an adoptive home where Andrea and Ariel could be placed together; Andrea's case was being transferred to the adoptions social worker handling Ariel's adoption.

Regarding Andrea's behavior at school, her kindergarten teacher reported that she was doing well; there were no major concerns regarding aggressiveness and she was one of the best-behaved children in the class. Andrea's therapist stated that the child had made good progress and, although she continued to display developmental delays, her verbal and social skills had improved and her aggressive behaviors had decreased.

The grandmother was not present at the September 22, 2011, hearing. Her attorney² stated that the grandmother was in Mississippi due to a death in the family; she requested a continuance and for the matter to be set for contest. The juvenile court indicated that it had already found that it was appropriate to terminate the guardianship after a hearing where the grandmother had testified and that notice for this hearing was proper. Thus, the juvenile court denied the request for a continuance. The grandmother's attorney objected to the juvenile court's order terminating the guardianship.

Thereafter, the juvenile court granted DCFS's section 388 petition and terminated the grandmother's legal guardianship of Andrea. It then noted that a section 366.26 hearing for Andrea had been set for November 7, 2011.

The Grandmother's Appeal

On October 6, 2011, the grandmother filed another notice of appeal.

DISCUSSION

I. The juvenile court did not err in removing Andrea from her grandmother's care

A section 387 petition requires a bifurcated hearing. (Cal. Rules of Court, rule 5.565(e)(1); *In re Jonique W.* (1994) 26 Cal.App.4th 685, 691.) In the first phase, following the procedures for a jurisdictional hearing on a section 300 petition, the juvenile court determines whether the factual allegations of the section 387 petition are

² Mr. Alaynick previously represented the grandmother. While he was not present at the September 22, 2011, hearing, another attorney from his law firm (Ms. Jacobo) appeared and represented the grandmother.

true. “The ultimate ‘jurisdictional fact’ necessary to modify a previous placement with a parent or relative is that the previous disposition has not been effective in the protection of the minor.” (*In re Jonique W.*, *supra*, at p. 691.)

If the allegations are found true, a disposition hearing must be conducted following the procedures for a disposition on a section 300 petition. (Cal. Rules of Court, rule 5.565(e)(1) & (2).)

Here, the grandmother argues that substantial evidence does not support the juvenile court’s order sustaining counts s-1, s-3, and s-4 in the first amended section 387 petition. She does not challenge jurisdiction based on the allegations sustained under count s-2.³

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

It follows that the sustained allegations against the grandmother under count s-2 bring Andrea within the jurisdiction of the juvenile court. As long as there is one unassailable jurisdictional finding, it is immaterial that another might be appropriate. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875–876.)

Having determined that the juvenile court properly sustained the section 387 petition, we next consider whether the juvenile court erred in removing Andrea from

³ Count s-2 alleges: “On or about 01/07/2011, [the grandmother’s] home[] was found in a filthy unsanitary condition including old food, cigarette butts and trash scattered throughout the floors of the child’s home. There was a dirty couch in the living room. The child slept on a filthy mattress. Such a filthy, unsanitary[] home environment . . . creates a detrimental home environment and places the child at risk of physical and emotional harm, damage and danger.”

grandmother's care. In light of the unchallenged sustained allegation that the grandmother's home was filthy, unsanitary, and placed Andrea at risk, we readily find no error.

II. *The juvenile court did not err in declining to leave Andrea in the grandmother's care with services*

The grandmother argues that the juvenile court erred in failing to consider what services could have been provided to ensure maintenance of the legal guardianship.

It is well-established that a legal guardian is not entitled to reunification services. (*In re Carlos E.* (2005) 129 Cal.App.4th 1408, 1418–1419.) That said, “the Legislature intended that the juvenile court at least consider whether services are available to ameliorate the need for modification of the permanent plan. [Citation.] This is consistent with the overall intent of the dependency scheme, which is to protect children from abuse or neglect and to provide permanent, stable homes if those children cannot be returned home within a set period of time” (*In re Jessica C.* (2007) 151 Cal.App.4th 474, 483; see also § 366.3, subd. (b); Cal. Rules of Court, rule 5.740.) Under the plain meaning of section 366.3, as well as in consideration of the objectives and purpose of the dependency statutes, reunification services should be given to a legal guardian when the juvenile court determines that “such services are necessary and that keeping the child in the legal guardian's home is in the child's best interests.” (*In re Z.C.* (2009) 178 Cal.App.4th 1271, 1281.)

Here, the juvenile court considered whether services could have been appropriate and then determined that the grandmother would not have benefitted from them.⁴ In light of the unchallenged evidence that the grandmother's home was filthy and unsanitary, and that that home environment put Andrea at risk of harm, we conclude that there was no abuse of discretion. (*In re Jessica C.*, *supra*, 151 Cal.App.4th at p. 482.)

⁴ The grandmother's suggestion that the juvenile court did not set forth its reasons with adequate specificity is unsupported by legal authority that a more detailed statement for its reasons was required.

The grandmother claims that she was “blindsided” by the juvenile court’s decision not to order services recommended by DCFS. We cannot agree. Nothing requires the juvenile court to “rubber stamp” recommendations made by DCFS. (See *In re Z.C.*, *supra*, 178 Cal.App.4th at p. 1280.)

In re Jessica C., *supra*, 151 Cal.App.4th 474, upon which the grandmother heavily relies, is readily distinguishable. In that case, there was no evidence that any evaluation of services was made available; the social worker never considered whether services would have been appropriate. (*Id.* at p. 482.) In contrast, in the instant case, DCFS did prepare a report, which the juvenile court considered.

III. *The juvenile court did not err in denying the grandmother’s request for a continuance*

Finally, the grandmother argues that the juvenile court erred in denying her request for a continuance of the hearing on DCFS’s section 388 petition.

Section 352, subdivision (a) provides, in relevant part: “Upon request of counsel for the . . . guardian . . . the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of . . . her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.” (See also Cal. Rules of Court, rule 5.550; *In re J.I.* (2003) 108 Cal.App.4th 903, 912.)

A party requesting a continuance of a hearing must file a written notice of motion “at least two court days prior to the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.” (§ 352, subd. (a).)

The juvenile court did not abuse its discretion in denying the grandmother's request for a continuance of the hearing on DCFS's section 388 petition. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.) Procedurally, we note that the grandmother did not comply with the steps for seeking a continuance. Substantively, the grandmother did not show good cause for the continuance. While she claims that she was unable to attend the hearing because of a death in the family, there is no evidence to support this assertion. (*In re Stephen W.* (1990) 221 Cal.App.3d 629, 646, fn. 13 [attorney's statement is not evidence].) And, the record contradicts this contention. In June 2011, the grandmother informed the social worker that she planned to move to Mississippi permanently; her testimony at the hearing on the section 387 petition confirmed her intent. Later, on September 1, 2011, the grandmother told the social worker that she was in Mississippi and that she had "medical problems" that prevented her from attending the hearing. Thus, the juvenile court was free to disregard the grandmother's attorney assertion that the grandmother needed the continuance because she was only in Mississippi for a funeral.

Without citing legal authority, the grandmother claims that she was entitled to have her court-appointed attorney, Mr. Alaynick, present in court to represent her. Section 317 mandates that the grandmother be represented by an attorney and she was. An attorney from Mr. Alaynick's office appeared and argued on the grandmother's behalf. She never indicated that she was unprepared to proceed and represent the grandmother. Moreover, Mr. Alaynick received notice of the hearing; there is no evidence or argument as to why he could not be there and why his presence was required.

The grandmother also contends that "fundamental fairness" dictates that the matter have been set for contest. Again, there is no legal authority offered to support this argument.

Finally, we note that the grandmother has not shown prejudice by the juvenile court's denial of her request for a continuance. (Cal. Const., art. VI, § 13; *In re Celine R.* (2003) 31 Cal.4th 45, 59–60.) When the grandmother's attorney requested a continuance, she did not provide any offer of proof as to what the grandmother would testify to at a

continued hearing. And, on appeal, the grandmother still neglects to inform us as to how the outcome of the proceeding would have been different had she been present at the hearing. It follows that there is no basis to reverse the juvenile court's order.

DISPOSITION

The juvenile court's findings and orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ