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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ZA.A. et al. Persons Coming
Under the Juvenile Court Law.

B279813
(Los Angeles County
Super. Ct. No. DK18113)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

G.B.,

Defendant and Appellant.

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

Elizabeth Klippi, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ G.B. (Father) appeals from the juvenile court's order denying his section 388 petition seeking an order returning his three sons (then ages 6, 4 and 3) to his care. We affirm.²

BACKGROUND

Detention

In June 2016, the Los Angeles County Department of Children and Family Services (DCFS) detained five-year-old Za.A. from S.A. (Mother)³ at a Department of Public Social Services (DPSS) office based on allegations of physical abuse. After receiving a referral, a DCFS social worker went to the DPSS office and viewed a video recording of the incident, which showed Mother striking Za.A. on the head with an open hand six times.

As set forth in the June 29, 2016 detention report, the social worker interviewed Mother at the DPSS office. Mother was there because she was homeless and looking for a place to

¹ Further statutory references are to the Welfare and Institutions Code.

² Father's notice of appeal also indicates he is appealing from the jurisdictional/dispositional findings and order, but he does not raise any contentions regarding those findings and order in his appellate briefing. Accordingly, he has abandoned his appeal from the jurisdictional/dispositional findings and order.

³ Mother is not a party to this appeal.

live. She stated she “slapped” Za.A. multiple times on “the top of his head” because “she was angry and irritated” that “he was acting out, screaming and throwing a tantrum” because he “wanted to leave” the office. According to Mother, both she and Za.A. were “irritated” because they had not been getting enough sleep due to their lack of housing. They had “been in and out of hotels ever since [Za.A. was] born” and spent the previous night in a car parked outside the maternal grandmother’s home.⁴ Mother told the social worker she did not have a support system and could not stay inside the maternal grandmother’s home because the maternal grandmother did “not want to help her.” She provided the maternal grandmother’s address and phone number to the social worker.

Mother refused to disclose the whereabouts of her other two sons, three-year-old Zep.A. and two-year-old Zer.A., stating only “that they were with a friend.” She also refused to identify the children’s father. She told the social worker “the children were not up-to-date on their immunization[s] due to their lack of Medi-Cal,” and Za.A. had chronic lung disease and asthma. She provided the names of two doctors she claimed had seen the children at Harbor-UCLA Medical Center. She also stated “she was not comfortable with [Za.A.] going to school [given] her current housing situation,” so she had not enrolled him. She denied having a mental illness but then stated she did “not know what [was] going on with her mentally and [wanted] to discuss it with her doctor” before providing additional information to DCFS.

⁴ In using the term “maternal grandmother,” we are referring to Za.A.’s grandmother (Mother’s mother).

The social worker also interviewed Za.A. at the DPSS office. The child told her Mother hit him on the head, which hurt, and he cried. The social worker asked if he felt safe, and he said he did not. The social worker also asked if he knew where his brothers were, and he said they were in the car.

As stated in the detention report, the Los Angeles County Sheriff's Department cited Mother for child abuse, but did not arrest her. DCFS detained Za.A. from Mother based on "substantiated allegations of physical abuse." The social worker brought Za.A. to the maternal grandmother's home. When they arrived, the maternal grandmother, Father, Zep.A., Zer.A., and a maternal aunt (Mother's sister) were there.

The social worker interviewed the maternal grandmother in the three-bedroom home she shared with the maternal aunt. The maternal grandmother explained that, although Mother had a bedroom and stored some of her belongings there, she was not "allowed in the home" because the maternal grandmother and maternal aunt did "not tolerate [M]other arguing in [the] home." The maternal grandmother believed Mother "suffer[ed] from depression and need[ed] counseling and medication." She previously told Mother "she could not stay with her until she received the help that she needed." She denied ever seeing Mother hit the children. She stated Mother disciplined the children "by telling them to stop." She added "that the children ha[d] temper tantrums and [M]other need[ed] to learn ways to control" them. She agreed to have the children stay with her and said she understood Mother could not visit them "unless scheduled by DCFS."

The social worker also interviewed Father at the maternal grandmother's home. He stated he dropped off Mother and Za.A.

at the DPSS office and took his other two sons to get ice cream. He maintained he was unaware of the incident at the office until the social worker arrived at the maternal grandmother's home. He told the social worker "it [was] not like [M]other to hit the child," and he "believed it happened because of [M]other's mental illness." He explained he thought Mother had depression, and he "ha[d] been telling [her] to get help but she still ha[d] not." He also added that Mother had anxiety, which caused her to become "frustrate[d]." According to Father, Mother did not usually discipline the children, and she did not physically abuse them. Father indicated he did not need to discipline the children because when "he ask[ed] them to do things . . . they listen[ed]."

Father told the social worker Mother usually stayed at the maternal grandmother's home or in hotels. Conflicts with the maternal aunt caused Mother to leave the maternal grandmother's home. Father mentioned an occasion on which the maternal aunt broke windows in a neighbor's home after "an incident" (not further defined) with Mother. According to Father, the maternal aunt "ha[d] received help for her [own] mental illness."

Father explained he and Mother did not live together and were not in a romantic relationship. He told the social worker he lived with his cousin, but refused to provide the address. He stated he had known Mother "for a very long time" and was the biological father of the three children. He and Mother did not have a custody agreement, but he maintained he saw the children every day and "supported [M]other by giving her money" and taking the children so she could have "time to herself." He stated he worked in "computer network installation." He agreed the children should stay at the maternal grandmother's home

and told the social worker he would continue to visit them during the day and “take them out for ice cream.”

The social worker observed three-year-old Zep.A. and two-year-old Zer.A. at the maternal grandmother’s home. As stated in the detention report, both children were “nonverbal” and could not make a statement. On Zep.A., the social worker noted a half-centimeter, flat, pink scar on his arm, as well as healed scars in the middle of his back “that resembled scratch marks.” Father “explained that the scars were from rolling on the carpet.” During the social worker’s visit, Zep.A. was “crying and running around the house.” Zer.A. also had “old scratch marks” on his back and “dry patches of skin on the back of his neck and under his left armpit.” Father stated “the scars were from playing.” He also explained that all of the children had eczema, which was treated with cortisone. The social worker “observed [Zer.A.] running and playing in the home.”

The social worker next interviewed the maternal aunt, who stated Mother lived “off and on” at the maternal grandmother’s home. The maternal aunt stated in January 2016, she witnessed Mother hit Zep.A. on the arms with a comb, resulting in a referral to DCFS.⁵ She intervened and told Mother to stop hitting Zep.A., but Mother did not. A physical altercation ensued between the two women. In an effort to get help, the maternal aunt threw a brick through the neighbor’s window. She wanted

⁵ DCFS closed the referral as inconclusive because Mother was cooperative during the investigation and deemed capable of meeting the children’s needs. An earlier June 2015 referral resulting from observations of scars on the children’s bodies also was closed because DCFS lost contact with the family during the investigation.

the neighbor to call the police. She told the social worker she had seen Mother hit the children with a belt or other objects on a couple of occasions. She said she “ha[d] seen Father spank the children once,” but usually he yelled at them. She did not attribute the children’s scars to physical abuse, explaining that they fell often and hit each other.

The maternal aunt expressed concern about Mother and Father parenting the children. She believed they “need[ed] counseling to address their communication issues and their finances.” She told the social worker that in the past, Mother did not attend college and decided to work “due to pressure from [F]ather.” She also stated Mother was “very guarded about [F]ather.” She believed Mother had a mental illness that should be treated with medication.

The social worker attached to the detention report court documents from a prior dependency case (2008-2010) involving Father’s five sons from a prior relationship. The juvenile court sustained the petition in that case as to Father based on his failure “to provide the children with the necessities of life including food, clothing, shelter and medical care.” In December 2010, the court terminated dependency jurisdiction in that case and granted sole legal and physical custody of the boys to their mother.

On June 29, 2016, DCFS filed a dependency petition in this case under section 300, subdivisions (a), (b) and (j), alleging Mother’s physical abuse of Za.A. and Zep.A., her mental and emotional problems, and Father’s failure to protect the children from Mother’s abuse and mental and emotional problems placed the children at risk of harm. DCFS recommended the juvenile court detain the children from both parents. At the June 29,

2016 detention hearing, the court detained the children from Mother and released them to Father on the condition they remained in the maternal grandmother's home. The court ordered monitored visitation for Mother.

Jurisdiction/Disposition

As stated in the August 29, 2016 jurisdiction/disposition report, the dependency investigator spoke with Mother by phone on August 9, 2016. She informed Mother she had been unable to contact the maternal grandmother and Father. Mother said she would contact Father and have him call her. In response to the investigator's inquiry about her whereabouts, Mother disclosed she was at the maternal grandmother's home, which concerned the investigator because she was not supposed to be there. Mother stated the children were not present and she believed they were with their aunt.

Later on August 9, 2016, Father called the dependency investigator and asked why she had been trying to contact him. She explained she wanted to interview him regarding the allegations in the petition. He responded that he already had provided a statement to DCFS and questioned the need for another interview, arguing the allegations did not involve him and he had done nothing wrong. The investigator explained that both he and Mother were named in the petition.

The investigator told Father she and the social worker had been "having a hard time making contact with the children," and she had concerns about the children's care. Father stated he was taking care of the children and meeting their needs. The investigator pointed out the children had missed "an important follow-up medical appointment" in July and still were not enrolled in school/preschool. Father indicated he was unaware of

the appointment. The investigator explained it was “his duty to ensure that the children’s medical needs [were] being met.” Father insinuated the investigator was bullying him and accused her of attempting to remove the children from him “in order to make more money.”

A social worker who had been listening on the call (with Father’s knowledge) “stepped in to mediate the conversation.” She explained the investigator needed to meet with him and the children to assess the children’s needs. Father stated he was “extremely busy,” with a “very demanding” job “installing computers for the ‘U.S. Military,’” and he was “gone all day.” He explained a paternal aunt (his sister) and the maternal grandmother cared for the children while he worked. He refused to provide the address where he was residing, stating he was “not at liberty to give out [his cousin’s] address.” He added that he was “working on obtaining housing for himself and his children.” The investigator and social worker informed him they could provide referrals for housing assistance if he agreed to meet with them. As he continued to be “argumentative,” they told him DCFS might seek an order removing the children from his custody if he refused to cooperate. He responded, “You do what you have to do.”

As also set forth in the jurisdiction/disposition report, a social worker visited the home of the paternal aunt who cared for the children while Father worked, and further interviewed the paternal aunt by telephone the following day. The paternal aunt told the social worker she moved to California in or around May 2016 “to help” Father. “[E]very morning,” Father dropped off the children with her between 6:00 and 6:30 a.m., and he picked them up between 6:30 and 7:00 p.m. She did not believe Father

could care for the children because he was “always working.” She expressed concern about what she characterized as the children’s “delayed” development. She described a lack of “meaningful vocabulary, stating the children “grunt[ed]” to communicate their needs. She wanted to enroll them in school/preschool and believed they “would benefit from therapy or Regional Center services.” All three children still wore diapers, even Za.A. who was nearly six years old. When she began caring for the children, the dry patches on their skin “looked like open wounds.” She started treating their eczema with olive oil and the condition improved, although all three children still had dry patches on their limbs and neck.

On another occasion during the period of supervision discussed in the jurisdiction/disposition report, the social worker attempted to visit the children at the paternal aunt’s home, but no one was present. The social worker called the paternal aunt, who stated the children were with Father and she did not have his address. The social worker made an unannounced visit to the maternal grandmother’s home in an attempt to locate Father and the children. The maternal grandmother stated Father was at work, she was on her way out to a doctor appointment and to run errands, and the maternal aunt was going to watch the children. Although the maternal grandmother did not allow the social worker to walk through the home, the social worker observed Zep.A. and Zer.A., “sitting down on the living room floor and . . . crying loudly and non-stop.” Za.A. was standing in the passenger seat of a vehicle (without a seatbelt) as the maternal aunt moved the car from the driveway and parked it across the street. The social worker attempted to schedule another visit to see the

maternal grandmother and the children, but the maternal grandmother was unresponsive to the social worker's requests.⁶

Also in the jurisdiction/disposition report, the dependency investigator summarized an August 10, 2016 telephone call with the pediatrician who was supposed to see the children in July 2016 for the follow-up appointment they missed. The pediatrician expressed concern for the children because their eczema was "terrible," Za.A.'s asthma was not "well managed," and Father "did not seem enthusiastic about bring[ing] the boys back" for their follow-up appointment. The pediatrician was not surprised when the children missed the appointment. She believed the family managed Za.A.'s asthma by taking him to the emergency room. Father told her the children saw a doctor at Harbor-UCLA Medical Center, but the pediatrician looked up their medical records and only found notes regarding emergency room visits, not doctor appointments. Asked to describe her "impression" of Father, the pediatrician responded: "He was not buying into any of this. I could tell it was not a priority to get the children into school. He was not interested in having Z[a.A.] receive mental health services. He just kept saying, "everything is fine, everything is fine." He said things like, "you guys just want to make money off of these appointments." I was like, no, I just wanted to be able to follow the boys further. The father was

⁶ As stated in the jurisdiction/disposition report, DCFS believed Mother was living in the maternal grandmother's home without DCFS/court approval, given the maternal grandmother did not allow the social worker to walk through her home during the unannounced visit, she was reluctant to schedule another home visit, and Mother had not contacted DCFS to schedule her monitored visitation.

not interested in what we had to say.” She added that the children “were not very verbal.”

The dependency investigator contacted the office of a doctor Mother identified as the children’s doctor at Harbor-UCLA Medical Center. Office staff confirmed Za.A. and Zep.A. were not patients of the clinic, and Zer.A. was last seen there when he was seven months old (more than two years before) and missed an appointment scheduled for April 2016.

DCFS recommended in the jurisdiction/disposition report that the juvenile court detain the children from Father and place them in out-of-home care.

In a last minute information for the court filed August 29, 2016, DCFS described additional contacts with Father. On August 11, 2016, Father called the dependency investigator to schedule a meeting, but they did not settle on a date. The investigator told him she was concerned about his lack of cooperation in enrolling the children in school and taking them to their medical appointments. She also explained DCFS had recommended to the juvenile court that it detain the children from him. Father stated he would enroll the children in school the following day and immediately reschedule the follow-up medical appointment with the pediatrician. He also agreed to contact the investigator the following week to schedule his interview with her. Father did not do any of these three things.

As stated in the same last minute information, on August 12, 2016, Father went to a DCFS office and met with a social worker. He signed releases for DCFS to obtain the children’s medical information and to refer the children to the Regional Center. He also signed a letter the social worker prepared, setting forth the conditions he needed to meet to avoid having the

children detained from him, including taking the children to the pediatrician for a follow-up medical appointment, enrolling the children in school, and providing his address to DCFS. The investigator contacted the pediatrician and as of August 18, 2016, Father had not been in touch with her office to reschedule the children's medical appointment.

On August 29, 2016, Mother and Father were present for the adjudication hearing. The juvenile court continued the matter because the court's calendar was too full and ordered Mother and Father to appear on October 24, 2016 for the continued adjudication/disposition hearing. The court also ordered Father to enroll Za.A. in school.

As set forth in a last minute information for the court filed October 24, 2016, Father did not provide proof prior to the continued adjudication/disposition hearing that he enrolled Za.A. in school. On October 11, 2016, the dependency investigator called Father and inquired about school enrollment. Father responded that he had been sick with the flu and had to quit his job. He added that he had taken Za.A. to get his immunizations, which were now up-to-date. The investigator again asked about school enrollment, and Father said he was standing in front of an elementary school. He provided the name of the school. The investigator reiterated her concerns about Father taking months to enroll Za.A. in school and to reschedule the children's follow-up medical appointment.⁷ Father argued "DCFS [was] 'judging' him and 'bullying' him and he [was] tired of it." The investigator

⁷ The pediatrician informed the investigator the children missed their September 30, 2016 rescheduled follow-up appointment.

asked Father to call her back when he finished enrolling Za.A. in school. Twice during the next half hour, the investigator contacted the school Father identified and learned he had not been there to enroll Za.A. The following day, the school contacted the investigator and informed her Father attempted to enroll Za.A. on October 13, 2016, but he did not bring the required documents so Za.A. was not enrolled.

Mother and Father were not present at the October 24, 2016 continued adjudication/disposition hearing, and their attorneys requested a continuance so they could be present. The juvenile court denied the requests, stating notice was proper and noting the parents were present at the prior hearing where the court ordered them to appear.

The juvenile court admitted DCFS's reports into evidence (the reports discussed above), and the parties argued their cases on adjudication. Father's counsel requested the court dismiss him from all counts in the petition, arguing he did not live with Mother and the children and was unaware of any conduct of Mother from which the children needed protection. Mother's counsel also requested the court dismiss the petition as to her, but did not elaborate with argument. The children's counsel and DCFS asked the court to sustain the petition as to Mother and Father. DCFS's counsel argued the evidence demonstrated Father was aware of Mother's mental health issues and should have protected the children.

As to Mother, the juvenile court sustained the petition, as amended, under section 300, subdivisions (a), (b) and (j), regarding her physical abuse. The court dismissed Father from those counts (a-1, a-2, b-1, b-2, j-1 & j-2). As to both Mother and Father, the court sustained count b-3, as follows: "The children

Z[a.A.], Z[ep.A.], and Z[er.A.]’s mother, S[.]A[.], has demonstrated mental and emotional problems, including periods of emotional instability, extreme irritability, anxiety, and emotional breakdowns, which render the mother unable to provide regular care and supervision of the children. The children’s father, G[.]B[.], knew or reasonably should have known of the mother’s mental and emotional problems and failed to protect the children. Such mental and emotional problems demonstrated by the mother and the father’s failure to protect the children endanger the children’s physical health and safety and place the children at risk of serious physical harm, damage and failure to protect.”

Regarding disposition, Father’s counsel asked the juvenile court to order the children placed with him (home of parent) on the condition they remain in the maternal grandmother’s home. Counsel commented: “I’m not going to say that Father has been fully cooperative or responsive to what has been required with respect to the children’s enrollment in school and various doctors’ appointments. [¶] However, there is no indication that he won’t be in the future, and I think given a stern warning by the court would allow Father then to continue to be the custodial parent of the children and make sure that their services are complied with.”

The children’s counsel asked the juvenile court to detain the children from Father and allow them to remain in the maternal grandmother’s home. Counsel stated that, according to the maternal grandmother, the children were using a cream for their eczema and Za.A. was using a nebulizer for his asthma. The children were potty-trained but wore pull-up diapers at night. Counsel acknowledged the children had speech delays and that “Father ha[d] been resistant in following up with the oldest

child at school, Regional Center, and mental health services.” Counsel argued if the maternal grandmother had custody, she could obtain these services for the children instead of “passing this off on the father” because of the “home of parent father” order. Counsel added “the boys were comfortable, healthy, and much more talkative than [DCFS] reported them to be.”

Counsel for DCFS asked the juvenile court to remove the children from Father, citing his failure to enroll the children in school and take them to medical appointments and his lack of cooperation with DCFS’s efforts to ensure the children had proper care. Counsel also mentioned the concerns expressed by the pediatrician and the paternal aunt regarding the children’s eczema and developmental delays and Za.A.’s asthma. Counsel was hopeful the children could remain together in the maternal grandmother’s home, but noted DCFS had experienced “some difficulty communicating with her.”

The juvenile court declared the children dependents of the court and removed them from Mother’s and Father’s custody. The court commented: “The father is basically not caring for the children at all, and there have been medical issues with respect to the eczema and asthma. The children are not going to school. There are serious delays for the one child who barely talks at age five. So these children are not appropriately in Father’s care.” The court granted DCFS discretion to determine whether the children would remain placed with the maternal grandmother and ordered monitored visitation and reunification services for Mother and Father. As part of his case plan, the court ordered Father to attend a parenting course and individual therapy to address case issues. The court also ordered him to attend all of the children’s medical appointments, school meetings, and

Regional Center appointments (if such services were deemed appropriate).

On October 24, 2016, after the adjudication/disposition hearing, a DCFS social worker received a call from juvenile court staff, informing him the court had removed the children from Father's custody. The social worker called Father and informed him about the removal and the fact DCFS planned to detain the children. The social worker also called the maternal grandmother, who brought the children to a DCFS office. The same day, October 24, 2016, DCFS placed six-year-old Za.A. and four-year-old Zep.A. in one foster home and three-year-old Zer.A. in another.

Father's Section 388 Petition

On November 1, 2016, a week after the jurisdiction/disposition hearing, Father filed a section 388 petition, seeking an order releasing the children back into his care. He attached to the petition the children's immunization records, indicating Za.A. received immunizations on October 7, 2016, and his brothers received immunizations on October 21, 2016. He also attached a school enrollment form for Za.A., and represented the child was supposed to start school on October 24, 2016, but because of the adjudication/disposition hearing, he changed the start date to October 25, 2016.⁸ He stated he informed the social worker he "had to first go through Cal Works to qualify for Medical [*sic*], to get the appointments for the

⁸ As set forth in a December 16, 2016 interim review report DCFS prepared in response to Father's section 388 petition, on October 21, 2016, before the adjudication/disposition hearing, the school contacted the social worker and informed him Za.A. was scheduled to start school on October 24, 2016.

vaccinations in order to enroll the children in school,” and the social worker told him “not to worry.” Father also explained he missed the adjudication/disposition hearing because his car broke down on the freeway and he arrived at the courthouse late. He represented he would attend parenting class and individual counseling sessions and keep up with the children’s medical appointments. In explaining why the requested order would be better for the children than the current suitable placement order, Father stated: “The children have never been away from me or their maternal grandmother. I don’t even know where they are and DCFS has not allowed me any contact with the children since 10/24/2016. I am very fearful for their emotional safety and wellbeing.” The juvenile court set a hearing on the petition for December 16, 2016.

On December 16, 2016, DCFS filed an interim review report, responding to Father’s section 388 petition. According to the report, on October 25, 2016, the day after DCFS placed the children in foster care, both foster mothers contacted the social worker and stated their beliefs the children had mental health issues. The children had been enrolled in therapy since before the adjudication/disposition hearing. In mid-November 2016, the social worker spoke with the children’s therapist, who stated the maternal grandmother believed the children needed therapy and had asked for assistance with the children’s behavior on multiple occasions. The therapist added that Father “did not think that his children needed to be enrolled in therapy.”

Also stated in the same interim review report, on November 3, 2016, the children attended appointments at LAC+USC Medical Center. Za.A. and Zep.A. were diagnosed with asthma. On November 9, 2016, the foster mother informed

DCFS that Za.A.'s "asthma medication was not working." The following day, she took Za.A. to an emergency room where he was given a breathing treatment.

DCFS recommended the children remain suitably placed, stating in the interim review report: "Based on the limited available information as to [F]ather's current compliance,^[9] and maternal grandmother's limited ability to parent and supervise [the] children in a safe manner, DCFS recommends that [F]ather's 388 Petition to return the children to their maternal grandmother . . . be denied. It has been learned from the children['s] recent [clinic] appointment that the children have medical and mental health issues which were left unattended by maternal grandmother and [F]ather. The children will need regular medical supervision as well as mental health services."

Father and Mother were present at the December 16, 2016 hearing on Father's section 388 petition. Father did not present any evidence at the hearing. His counsel reiterated that Father arrived at the courthouse on October 24, 2016 shortly after the adjudication/disposition hearing concluded due to transportation issues, and planned to present the children's immunization records and Za.A.'s school enrollment form at that hearing. Counsel also argued DCFS misled Father in that the social worker was telling him "don't worry about it" while the dependency investigator was recommending removal of the children. Counsel acknowledged Father did not have a home of

⁹ As stated in the interim review report, on November 29, 2016, Father told the social worker he had signed up for "services," but also indicated he did not know what services were required under his court-ordered case plan at the time he signed up for these unidentified services.

his own that would be appropriate for the children, but urged the juvenile court to return the children to the maternal grandmother's home where the children "had all resided . . . since birth."

The children's counsel stated that although she was concerned about the children being split up in two different foster homes, she did not believe the juvenile court should return the children to Father. She argued Father had thwarted DCFS's efforts to obtain information about the children's medical and mental health needs. She also urged the court against returning the children to the maternal grandmother's home without an assessment of her ability to meet the children's needs. DCFS's counsel stated the agency was not opposed to assessing the maternal grandmother for placement so long as neither Mother nor Father resided at her home.

The juvenile court denied Father's section 388 petition, stating the children were not properly cared for when they were released to Father, and it was not in the children's best interests to return to his care until "appropriate changes" were made. The court ordered DCFS to assess the maternal grandmother for placement.

DISCUSSION

Father contends the juvenile court abused its discretion in denying his section 388 petition.

Under section 388, "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a).) "The parent bears

the burden of showing both a change of circumstance exists and that the proposed change is in the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "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.'" (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.) "In considering whether the [parent] has made the requisite showing, the juvenile court may consider the entire factual history of the case." (*Id.* at p. 616.) We will not reverse an order denying a section 388 petition unless the parent demonstrates the trial court abused its discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Father argues he demonstrated a change of circumstance because he took the children to get their immunizations and enrolled Za.A. in elementary school. But he still had not shown he could meet the children's medical, mental health and developmental needs. While the children were released to him, he did not manage Za.A.'s asthma (and apparently did not notice Zep.A. also had asthma). He continued to deny the children needed mental health and/or Regional Center services, even though the children's pediatrician, therapist, social workers, the maternal grandmother, and the paternal aunt all stated the children could benefit from such services. He expressed no concern about the children's delayed speech and other developmental milestones. He seemed not to notice the children's behavioral issues, even as the maternal grandmother was asking the children's therapist for assistance in dealing with these issues. He abdicated responsibility to the maternal grandmother and the paternal aunt for treatment of the children's medical issues, and for meeting their mental health and developmental

needs, even during the time the children were released to *his* care.¹⁰

Father did not demonstrate it was in the children's best interests to return to his care. He consistently viewed DCFS's efforts to secure needed services for the children as DCFS bullying him and attempting to make money off of the children. He had given the juvenile court no reason to believe he would keep up with the children's medical and therapy appointments and medical treatments if the court released the children to him. Prior to the children's first detention from him and Mother, and up to the second detention from him, Father maintained he saw the children every day, and yet he continued to deny the children had unmet needs (medical, mental, developmental) that needed to be addressed by professionals.

The juvenile court did not abuse its discretion in denying Father's section 388 petition and declining to return the children to his care. We recognize the children had lived with maternal relatives since birth and were living in foster care for the first time at ages six, four and three, a point Father emphasizes in his appellate briefing. We do not ignore concerns about the

¹⁰ Throughout the dependency proceedings, Father wanted to have the children released to him, but cared for by the maternal grandmother. If the children are released to him, he needs to accept responsibility for their care. At the time of the hearing on his section 388 petition, he had not shown he was capable of providing proper care. If the maternal grandmother believes she is capable of caring for the children and wants them placed in her home, DCFS needs to conduct an assessment of her as the caregiver, as DCFS, the children's counsel and the juvenile court agreed at the hearing on Father's petition.

children's stability. But Father did not demonstrate in his petition a change of circumstance warranting the removal order be set aside in the best interests of the children. The meeting of the children's medical, mental health, and developmental needs was crucial, and Father did not demonstrate he was prepared to meet those needs at the time of the hearing on his petition.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.