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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JESUS D., et al., Persons Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. G.M. et al., Defendants and Appellants; JESUS D. et al., Minors and Appellants.	B267382 (Los Angeles County Super. Ct. No. CK85034)

APPEAL from an order of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Affirmed.

Jonathan B. Steiner and Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant G.M.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant I.D.

Lori A. Fields, under appointment by the Court of Appeal, for Minors Jesus D. and Monica D.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Appellants Jesus D., born in March 2008, and Monica D., born in September 2009, are the children of appellants G.M. (Mother) and I.D. (Father). Both children are disabled.[1] In 2011, shortly after the children were detained, they were placed with Jesus's godmother, Carmen R., and cared for by Carmen, her daughter, Claudia R., and Claudia's then partner (now wife), Jessica P. After

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[1] Jesus is blind in one eye, and suffers from hypothyroidism, asthma and moderate retardation. A report prepared in 2013, when he was five, stated he was not toilet trained, could not feed himself, was almost entirely non-verbal, and "require[d] constant supervision during waking hours to prevent injury/harm in all settings." In 2014, Monica was diagnosed with a speech/language delay and was enrolled in individual therapy to address mental health issues.

reunification services were terminated in 2013 and the court instructed the Department of Children and Family Services (DCFS) to commence adoption planning, a great-aunt, Griselda G., and Claudia and Jessica offered to adopt both children. After many months, DCFS selected Claudia and Jessica as the prospective adoptive parents, a decision confirmed by the juvenile court at the October 2, 2015 section 366.26 hearing, when it terminated parental rights. Appellants contend DCFS and the court failed to apply section 361.3 of the Welfare and Institutions Code, the relative preference provision, asserting that it requires relatives to be given preference in placement even after reunification services are terminated.[2] Father also contends parental rights should not have been terminated because the children were not adoptable.

We conclude that assuming section 361.3 applies to the present situation -- where the relative comes forward after reunification services are terminated and the court has selected adoption as the goal of the permanent plan -- both DCFS and the court gave appropriate consideration to Griselda's request and reasonably concluded it was in the children's best interest to remain with the couple who had been providing consistent, excellent care for many years. In addition, we find that substantial evidence supported the

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[2] Undesignated statutory references are to the Welfare and Institutions Code.

finding that the children were adoptable. Accordingly, we affirm the court's October 2, 2015 order.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Original Petition and Reunification Period*

This matter has been pending since November 2010, when DCFS filed a petition under section 300, subdivisions (b) (failure to protect) and (g) (no provision for support), alleging that then two-year old Jesus and one-year old Monica were endangered because Mother and Father had been arrested and incarcerated without making appropriate plans for their care.[3] The children were placed in shelter care and foster care while DCFS assessed the home of Carmen.[4] Mother and Father both concurred with the proposed placement.

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[3] The children had been left with a paternal aunt, whose home was deemed unacceptable by DCFS because she and her partner had three children of their own, all living in a one-bedroom apartment. The petition was subsequently amended to state that Mother and Father medically neglected Jesus, who was in need of intensive medical care. After Father's demurrers were sustained and the petition amended, the court found jurisdiction appropriate under subdivision (b), and ordered Mother and Father to participate in parent education and individual counseling.

[4] Carmen was deemed a "non-relative extended family member" or "NREFM." (See § 362.7 [defining NREFM as "an adult caregiver who has an established familial relationship with a relative of the child . . . or a familial or
(Fn. continued on next page.)

At the time, Carmen resided with her daughter, Claudia. Carmen said Claudia would be her "back up helper" who would care for the children when Carmen was at work. She also relied on Claudia for any necessary driving. Carmen and Claudia were instructed to obtain appropriate medical training to learn how to care for Jesus and Monica. Just prior to the transfer of custody, Carmen informed DCFS that Claudia had started a new job and that her "niece," Jessica, would help take care of the children.[5] Jessica live scanned in March 2011. That same month, she and Carmen received the necessary medical training, and Monica was placed in Carmen's home. Jesus joined his sibling there a month later, and Carmen was appointed the children's educational representative. In June 2011, DCFS reported Jessica had moved into the home to provide assistance to Carmen.

In March and April 2011, several maternal relatives came forward seeking custody, including maternal great-aunt Griselda G., who lived in Washington, and maternal

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mentoring relationship with the child"].) Although the briefs describe Carmen as Father's godmother, the record states she was Jesus's.

[5] Several years later, in December 2013, DCFS learned that Jessica was in fact Claudia's partner, and that the two had married in July 2013.

great-aunt Maria G., who lived in Azusa.[6] In August 2011, DCFS reported that it had investigated three maternal relatives who resided in California and concluded they could not be given custody for various reasons.[7] In September 2011, shortly after the six-month review hearing, and pursuant to an order submitted by minors' counsel, the court ordered DCFS to stop assessing relatives for placement unless the children had to be moved.[8]

The caseworker reports filed during the reunification period indicated the children were doing well in Carmen's home, but that she did not wish to adopt them, preferring long-term guardianship should reunification efforts fail. In January 2012, the caseworker informed Carmen that guardianship would not be an option. In February and March, Carmen indicated a willingness to adopt, first alone

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[6] Griselda was a certified nursing assistant and emergency technician, who had spent several years providing care to disabled people. She was raising four children of her own.

[7] Essentially, either the relative or another adult living in the home had a criminal history and/or a history with DCFS, or their homes were too small to accommodate the children, given the number of people already living there. Griselda's out-of-state home was not evaluated within this initial group.

[8] The minors' brief states, and the other parties do not dispute, that this order was prepared pursuant to a stipulation signed by all parties.

and then as co-parent with her daughter, Claudia, who at that point had a separate residence.[9] In November 2012, Carmen expressed strong reservations about adopting, explaining she was getting less help from Claudia, who had become employed full time. At that point, adoption planning seemed unnecessary because Mother had been released from incarceration in May 2012, had completed her reunification plan, and was beginning to take over care of the children. On November 8, 2012, the court issued an order permitting Mother overnight visitation, and she appeared on track to regaining custody.[10] However, Mother was arrested in

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[9] The record indicates that Claudia and Jessica were heavily involved in caring for the children throughout the reunification period. On more than one occasion, the caseworkers dealt with Claudia or Jessica directly when issues came up, such as providing information to the school or arranging to transport the children to Mother for visitation. In addition, the caseworkers stated on multiple occasions that Carmen had the support of Claudia and Jessica in providing a safe and loving home for the children, and observed that the children appeared to be as attached to Claudia and Jessica as they were to Carmen. Carmen herself informed the caseworker that Claudia and Jessica had been "help[ing] her with transportation, medical appointments and basic necessities for the children and family."

[10] Father was not expected to be released from custody until 2018. His reunification services had been terminated in August 2011 at DCFS's recommendation.

November 2012 for attempting to pass a forged check and for a substantial period, lost interest in regaining custody. On February 6, 2013, the court terminated Mother's reunification services and set a section 366.26 hearing, instructing DCFS to assign an adoption worker to the case and initiate an adoptive home study within a week, and to refer the children to the Placement and Recruitment Unit to locate prospective adoptive parents.[11]

DCFS concluded the children were adoptable, and identified adoption as the goal. In January 2013, however, Carmen had expressed new doubts about both adoption and long-term guardianship, advising the caseworker that a new placement should be found for the children. After the court's February 2013 ruling, Griselda and another maternal relative, Sonia L., came forward as prospective adoptive parents.[12] Before assessment of either relative was complete, Carmen and Claudia again asked to be considered. While continuing to assess Griselda and Sonia, DCFS

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[11] Because she was complying with her plan even while incarcerated, and her date of release was just outside the 18-month window usually allowed for reunification, Mother had been provided 24 months of services.

[12] As Sonia had come forward a month earlier (on April 10, 2013) and lived in California, DCFS addressed her first. In August 2013, she was advised to begin visiting the children and accompanying them to medical appointments. At some point not clear from the record, Sonia dropped out of consideration.

initiated the adoption home study process with Carmen and Claudia, as co-adoptive parents. Griselda visited the children in October, and the visit went well. However, when, at a hearing the following month, DCFS suggested the court initiate an "ICPC" for Griselda, counsel for the minors objected, noting that "the current caretakers want to adopt," and arguing that it would be "a waste of time and everybody's efforts to go to an ICPC when we have a currently approved home."[13] The court denied the request "without prejudice." DCSF requested several continuances of the section 366.26 hearing to accommodate its assessment process.

In February 2014, Carmen reported she was seeking disability relief as the result of severe knee pain and could neither go through with the adoption nor continue to be a foster parent much longer. DCFS concluded she should not be caring for the children, given her disability and their ages and special needs. At approximately the same time, Claudia and Jessica informed DCFS that they wished to adopt on

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[13] The "ICPC" or "Interstate Compact on Placement of Children" (Fam. Code, § 7900 et seq.) facilitates cooperation between states in the placement and monitoring of dependent children; it requires authorities in the sending state to furnish authorities in the receiving state notice of its intent to send a child to the receiving state, and requires the receiving state to prepare a report indicating the proposed placement is not contrary to the interests of the child. (*In re Johnny S.* (1995) 40 Cal.App.4th 969, 974-975.)

their own. The caseworker expressed concern that the couple had not been forthright about their relationship when the children were placed with Carmen, and that Jessica did not have a valid driver's license, but commenced a home study. In April 2014, the court ordered initiation of an ICPC for Griselda.[14]

In August 2014, DCFS held a team decision meeting and identified Claudia and Jessica as the prospective adoptive family. DCFS's subsequent report to the court stated that the couple had an appropriate home and that the children had a "strong bond" with them, as they had lived together for more than three years. The report noted that the ICPC was nearly complete, and that Griselda's home study would likely be approved soon. It explained that DCFS had strong reservations about Griselda's assuming custody because she was caring for five children (four of her own between the ages of 4 and 17, plus Damien). In September 2014, DCFS placed the children with Claudia and Jessica[15] In November 2014, because Monica needed an educational assessment and regional center evaluation,

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[14] In October 2013, Mother had given birth to a third child, Damien. In April 2014, she left Damien with Griselda.

[15] At an October 2014 hearing, the children's attorney told the court she had not been informed of this decision to change the children's placement and that she considered it inappropriate given that a relative was available. However, Griselda's ICPC had not been approved at the time.

DCFS asked the court to transfer educational rights from Carmen to Claudia and Jessica. The court issued the requested order.

Despite its determination that the children would be better off adopted by Claudia and Jessica, DCFS continued to go forward with Griselda as a "backup plan." In November 2014, DCFS reported to the court that Griselda had completed all necessary paperwork and training and that the Washington social services agency had begun a home study.[16] In January 2015, DCFS reported that the home studies for both prospective families were still in progress. By May 2015, both home studies were complete. In the May 2015 reports to the court, DCFS reiterated its recommendation that Griselda be viewed as a backup, and that parental rights be terminated so the children could be adopted by Claudia and Jessica.[17] The caseworker stated that Claudia and Jessica had been good advocates for the children in the time since they formally obtained custody and educational rights. They had obtained from Monica's school an individualized education program (IEP), had started her in speech therapy and individual counseling, and

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[16] Reports indicated that there had been delay completing the paperwork because Griselda's husband had a 2008 reckless driving conviction.

[17] The reports noted that Claudia and Jessica "lived in [Carmen's] home and had many responsibilities in caring for the children since 4/26/11."

had obtained an approval from the Regional Center for additional services.[18] In addition, they ensured Jesus received his annual IEP, and obtained additional one-on-one attention for his speech and vision issues. The children continued to demonstrate a strong attachment to Claudia and Jessica, referring to them as "mommy" and "papi." The caseworker expressed concern about moving the children to Washington where they would be outside the jurisdiction of the Regional Center, and might not receive the same special education and mental health services provided by this state. In addition, she expressed concern about how Griselda would handle seven children and how her family would deal with a child as disruptive as Jesus.[19] The reports stated that Claudia and Jessica "are knowledgeable about [the]

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[18] The Regional Center is a private nonprofit community-based organization which contracts with the State Department of Developmental Services to coordinate services for individuals with developmental disabilities. (See Lanterman Developmental Disabilities Services Act (§ 4500, et seq.); *Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 486; *Arce v. Kaiser Foundation Health Plan, Inc*. (2010) 181 Cal.App.4th 471, 479, fn. 3.)

[19] Jessica and Claudia wrote a letter to the court explaining that Jesus needed constant attention and assistance in feeding, dressing, bathing, and walking, as well as constant supervision, even during the night. They expressed concern about placing him in a home with a large family, because he was bothered by excessive noise and needed a quiet environment.

children's health and developing needs" and had been taking the children to "all their doctor's, school, and Regional Center appointments," as well as making themselves available to DCFS.

At the July 10, 2015 hearing, the court authorized a two-week vacation in Washington with Griselda. The visit went well, but DCSF continued to recommend that the children be adopted by Claudia and Jessica, based on its prior assessment and on new concerns that Griselda was not being candid about her interactions with Mother.[20] Monica stated she wished to remain with Claudia and Jessica and considered the placement "'home.'"

At the final hearing on October 2, 2015, the children's attorney urged the court to place the children with Griselda for adoption. She questioned whether Claudia and Jessica could handle Jesus when he got older. Noting Griselda's training and experience, she argued that Griselda could give the children a better life. She pointed out that the visits between Griselda and the children had gone well, and that Griselda had first indicated an interest in the children in

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[20] The caseworker arranged to meet with Mother to provide an update on the status of the case, and learned she had been in Washington at approximately the same time the children were there, although Griselda and Mother denied that a visit with the children had taken place. In addition, the caseworker learned that Monica had been coached to call Mother by another name so DCFS would not know when Mother had contact with Monica.

2011. She reminded the court that Claudia and Jessica had been less than forthright about their relationship and that Jessica had been caught driving without a license. She contended that both the statutory preference for placement with relatives and the statutory preference for placement with siblings supported moving the children to Griselda. With respect to termination of parental rights, she argued that Jesus was not generally adoptable, and would be specifically adoptable only if placed with Griselda.

The attorneys for Mother and Father joined minor's counsel.[21] Counsel for DCFS contended the children should remain with Claudia and Jessica. He questioned whether the transfer to their home constituted a new placement, pointing out that the children had continuously been cared for by Claudia from the beginning of the case, and that she had been designated a co-adoptive parent since "2013."[22] He argued that even assuming Claudia and Jessica's home was a new placement, DCFS had conducted the proper

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[21] Mother's and Father's views on placement for adoption had been inconsistent throughout the proceeding. After reunification services ended and adoption planning began, Mother generally took the position the children should be placed with Griselda or another maternal relative, and Father generally took the position they should remain with Carmen, Claudia and Jessica, but each occasionally expressed the opposite view.

[22] Claudia first asked to be considered as a co-adoptive parent in March 2012.

assessment, and that Claudia and Jessica had provided excellent care for the children. He further contended that because reunification services had been terminated for some time, the relative preference did not apply.

The court stated, "[w]e are at the stage in the proceedings where the focus is not on the parents' rights or other family rights, but [on] the best interests of the children" and their need for "permanency and stability," and that "the burden . . . is on the moving party for change of placement." The court further stated that even if section 361.3 applied, it "gives a right to consideration, and that's what's happened here. Notwithstanding [that] the children have long been removed from the custody of the parents and that reunification services had been terminated . . . , [DCFS] did refer the matter for . . . I.C.P.C., . . . the court did grant the request for consideration. So . . . that preference, if you want to call it, was given to the relative. . . . [T]hat preference doesn't give them a presumption of a right for custody or placement. It has been made and I'm agreeing that [Griselda] appears to be an appropriate person to care for these children, but I believe that the more compelling consideration at this time is consistency and stability for the children." The court observed that the evidence demonstrated that Claudia had been involved in the children's lives for five years, that there was "a strong bond between these children and the current caregivers," and that the "children are in a stable environment," where they were

"being well taken care of." Accordingly, the court ruled that the children would remain with Claudia and Jessica.

The court went on to find "by clear and convincing evidence" that the children were adoptable, and that no exception to the termination of parental rights applied. Accordingly, it terminated parental rights. The children, Father and Mother appealed.

DISCUSSION

A. *Relative Preference*

Appellants contend section 361.3 required the court and DCFS to give preferential consideration to Griselda in September 2014 when the children were "moved" from Carmen to Claudia and Jessica. For the reasons discussed, we conclude that assuming the section applies, DCFS and the court gave proper consideration to Griselda before concluding an alternative placement was in the children's best interest, and this conclusion did not represent an abuse of discretion.[23]

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[23] Respondent contends Father's notice of appeal was deficient because he did not identify placement as one of the issues to be addressed, and that, in any event, he lacks standing to contest placement. We need not address these issues because the children clearly have standing to appeal placement, and where placement issues are raised on appeal by a party with standing, we may accord a parent "a status . . . akin to that of amicus curiae." (*In re K.C.* (2011) 52 Cal.4th 232, 239; see *Cesar V. v. Superior Court* (2001) 91

(Fn. continued on next page.)

The relative placement preference set forth in section 361.3 gives "preferential consideration . . . to a request by a relative of the child for placement of the child with the relative" whenever "a child is removed from the physical custody of his or her parents . . . ." (§ 361.3, subd. (a).) It means that "'the relative seeking placement shall be the first placement to be considered and investigated.' [Citation.]" (*Cesar V.*, *supra*, 91 Cal.App.4th at p. 1033.) "The statute does 'not supply an evidentiary presumption that placement with a relative is in the child's best interest'"; it "require[s] the social services agency and juvenile court to determine whether such a placement is appropriate, taking into account multiple factors including the best interest of the child, the parents' wishes, and the fitness of the relative." (*In re R.T.* (2015) 232 Cal.App.4th 1284, 1295 (*R.T.*), quoting *In re Stephanie M.* (1994) 7 Cal.4th 295, 320.) "The correct application of the relative placement preference places the relative 'at the head of the line when the court is determining which placement is in the child's best interest.' [Citation.]" (*Cesar V.*, *supra*, at p. 1033.)

Courts have uniformly concluded that the section 361.3 preference applies "at least through the family reunification

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Cal.App.4th 1032, 1035 (*Cesar V.*) [permitting father who lacked standing to appeal relative placement preference issue "to support [relative's] position with arguments of his own"].) Because Mother merely joins in the arguments of the other parties, respondent raises no issue with respect to her standing, and we perceive none.

period." (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 795 and cases cited therein.) The majority of courts have held that relatives who come forward after reunification services were terminated cannot claim the benefits of the provision, particularly where the court has identified adoption as a goal. (See, e.g., *In re K.L.* (2016) 248 Cal.App.4th 52, 66 ["The section 361.3 relative placement preference does not apply where . . . the social services agency is seeking an adoptive placement for a dependent child for whom the court has selected adoption as the permanent placement goal"]; *In re Lauren R.* (2007) 148 Cal.App.4th 841, 854-855 ["[Removing a child] to place her for adoption . . . did not constitute a necessary new placement within the meaning of the relative placement preference. There is no relative placement preference for adoption"]; *In re Sarah S.* (1996) 43 Cal.App.4th 274, 277 [section 361.3 does not apply "to a placement made as part of a permanent plan for adoption" after reunification efforts have failed]; *In re Jessica Z.* (1990) 225 Cal.App.3d 1089, 1098, quoting *In re Baby Girl D.* (1989) 208 Cal.App.3d 1489, 1494 ["When a case moves from reunification to permanency planning, . . . and a court determines that a child should be freed for adoption, . . . there is 'no longer any reason to give relatives preferential consideration in placement'"]; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1064 ["Under section 361.3, it is proper to consider relatives for placement even after disposition, so long as reunification efforts are ongoing"]; but see *Cesar V.*, *supra*, 91 Cal.App.4th at pp. 1027, 1032 [applying preference

where relative came forward after reunification services terminated and foster family declined to adopt].)[24]

Appellant contends Griselda was entitled to preference when the children were formally moved from Carmen and placed with Claudia and Jessica in September 2014. But

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[24] The court in *In re Sarah S.* explained that its interpretation harmonized section 361.3 with section 366.26, subdivision (k), which gives preference to "any person who, as a relative caretaker or a foster parent, has cared for a dependent child" after the court "approve[s] a permanent plan for adoption" or frees the child for adoption: "[U]nder section 361.3, a 'relative' is given priority over others regarding the order in which applications for *placement* are processed [citation]," and "section 361.3 assures interested relatives that, when a child is taken from her parents and placed outside the home pending the determination whether reunification is possible the relative's application will be considered before a stranger's application. [Citation.]" (*In re Sarah S., supra,* 43 Cal.App.4th at p. 285, italics omitted.) Once reunification efforts have failed, however, "the only statutory preference in the adoption process is for a 'relative caretaker or foster parent' as provided in subdivision (k) of section 366.26," which gives a relative caretaker or foster parent "priority over others regarding the order in which applications for *adoption* are processed," and assures that a relative who has been caring for the child will have his or her application considered before those submitted by other relatives and nonrelatives. (*Id.* at pp. 277, 285.) "When . . . the relative caretaker . . . does not seek to adopt the child [or there is no relative caretaker] there is no statutory preference for any relative." (*Id.* at p. 285.)

this did not occur until more than a year had passed from the date the court terminated Mother's reunification services and selected adoption as the goal of the permanent plan. Accordingly, under the majority view, section 361.3 did not apply.

Moreover, even assuming the relative preference statute still applied at that stage of the proceeding, DCFS's assessment and the court's review of it met any obligation imposed by section 361.3.[25] DCFS initiated home studies for

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[25] Section 361.3 sets forth eight factors the agency and the court are to consider when determining whether relative placement is appropriate (a number of which are not pertinent after reunification efforts fail): (1) "[t]he best interest of the child"; (2) "the wishes of the parent, relative, and child, if appropriate;" (3) "the [Family Code] provisions regarding relative placement"; (4) "[p]lacement of siblings and half siblings in the same home, unless that placement is found to be contrary to the safety and well-being of any of the siblings"; (5) "[t]he good moral character of the relative and any other adult living in the home"; (6) "[t]he nature and duration of the relationship between the child and relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful"; (7) the relative's ability to provide "a safe, secure and stable environment for the child," "[e]xercise proper and effective care and control of the child," "[p]rovide a home and the necessities of life for the child," "[p]rotect the child from his or her parents," "[f]acilitate court-ordered reunification efforts," "visitation with . . . other relatives" and "implementation of all elements of the case plan," "[p]rovide

(Fn. continued on next page.)

Griselda and another relative who had come forward (Sonia). Before they were completed, first Carmen and Claudia, then Claudia and Jessica announced their interest in adoption. Although DCFS viewed all three as current caretakers, it did not immediately deem Claudia and Jessica the prospective adoptive parents after Carmen announced she would be unable to adopt. It assessed both Claudia and Jessica's home and Griselda's home over the course of many months, repeatedly asking the court to continue the section 366.26 hearing until the ICPC for Griselda and both home studies could be completed. At the team decision meeting in August 2014, DCFS weighed the positives and negatives for both prospective adoptive families. It concluded that the children would be better off with the couple that had capably cared for them for the past three years, addressing their special needs and making the two children the focus of their parenting efforts. The conclusion was not unreasonable. The record supports that Claudia and Jessica lived in the same home as the children most, if not all, of the time they were in Carmen's legal custody, and had been involved in every aspect of their care. Claudia and Jessica had a close bond with the children, who considered them to be their parents. Claudia and Jessica had always ensured the

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legal permanence for the child if reunification fails," and "[a]rrange for appropriate and safe child care, as necessary"; and (8) "[t]he safety of the relative's home." (§ 361.3, subd. (a).)

children received proper medical care and, after having been given legal custody and education rights, undertook extra efforts to obtain special education and other services available for disabled children. Removing the children from their caretakers of more than three years and moving them to Washington would have disrupted these services at a crucial point in their young lives, even if similar services were available there. Griselda had medical training and experience working with the disabled, but she was already caring for Damien and four children of her own. Damien had never lived with his siblings and had no ongoing relationship with them. His life, as well as the lives of Griselda's other children, were likely to be disrupted by introducing into the household two disabled children, one of whom needed almost constant parental care and attention.

After reviewing the record and hearing the argument of counsel, the court agreed that the placement with Claudia and Jessica was appropriate. It rightly focused on the "best interests of the children" and their need for "permanency and stability." It noted the "strong bond" that had developed over the many years Claudia and Jessica were involved in caring for the children. It recognized that a case could be made for Griselda, but concluded that "the more compelling consideration . . . is consistency and stability for the children." The court stated during the hearing that the burden of proof was on the parties seeking to move the children, but this was in line with its view -- supported by the majority of the appellate decisions -- that section 361.3

did not apply at that stage of the proceeding. When the court nevertheless considered the relative preference, it made clear that application of the preference would not change its conclusion that the children would be better off in Claudia and Jessica's care. On this record, we see no evidence that the court or DCFS abused its discretion in deciding Claudia and Jessica should be the children's prospective adoptive parents.

Appellants contend that *R.T.*, *supra*, 232 Cal.App.4th 1284 and *In re Isabella G.* (2016) 246 Cal.App.4th 708 support application of the relative placement preference here. We disagree. In *R.T.*, the agency placed a newborn minor with a nonrelated extended family member, although the father had identified two paternal aunts who wished to be considered for placement. (232 Cal.App.4th at pp. 1292-1293.) The proceedings moved quickly because the parents had failed to reunite with an older child and no reunification services were offered. At the dispositional hearing, the court ordered a permanent plan of placement with the NREFM. (*R.T., supra,* at p. 1293.) The agency thereafter refused to consider moving the child, although he was only three months old when the aunts' homes were approved, and a section 388 petition was denied by the court. (*Id.* at pp. 1293-1294.) Finding it "presently unsettled whether a relative is entitled to preference when requested late in the proceedings," the court concluded that resolution of the issue was unnecessary: "[T]he relatives invoked the preference *before* the dispositional hearing, the agency and court failed

to apply it at disposition, and the error was timely raised by a section 388 motion. Under these circumstances, the court should have directed the agency to evaluate the relatives for placement under the relevant standards [citation] and, upon receipt of the evaluation and the agency's placement recommendation, exercised its independent judgment to consider if relative placement was appropriate." (*Id*. at p. 1300.)

In re Isabella G. is to the same effect. The child's paternal grandparents sought custody immediately after the detention. The agency failed even to assess their home, and compounded its error by falsely informing the grandparents that there was a mandatory one-year waiting period before the child could be moved from the foster family with whom she had been placed. (*In re Isabella G., supra,* 246 Cal.App.4th at pp. 713-714.) After being repeatedly rebuffed in their efforts to obtain custody, the grandparents hired a lawyer, who filed a section 388 petition after the hearing at which reunification services were terminated. (*In re Isabella G., supra,* at p. 715.) The appellate court concluded the situation was indistinguishable in any significant respect from *R.T.*, and that the case law indicating the relative placement preference did not apply after reunification services were terminated did not preclude application of the preference under the circumstances: the grandparents "requested placement prior to the detention, jurisdictional and dispositional hearings," "before the 12-month review hearing," and "after the case was referred for a section

366.26 hearing," and the agency refused to comply with its obligation to conduct a home assessment on any of those occasions, "disregard[ing] the legislative preference for relative placement throughout . . . [the] dependency case." (*Id.* at pp. 722-723.)

Here, we have no such record of early and consistent requests for placement by the relative or disregard of any statutory obligations by the agency. Griselda, along with several other family members, approached DCFS during the early part of the reunification period. DCFS immediately began assessing the relatives' homes. When the parties stipulated that the children should stay with Carmen, and the court instructed DCFS to discontinue the assessments, no party or relative objected. No more was heard from any relative until 2013, when Griselda and Sonia emerged as prospective placements. By this time, the children had already spent two years in the care of Carmen, Claudia and Jessica. Nonetheless, DCFS again initiated the administrative processes and inspections required before a dependent child may be moved to a new home, particularly one located out of state, and conducted a fair evaluation of Griselda as a potential caretaker. The fact that it chose to place the children with the couple that had been involved in their care for so many years and had proven their ability to handle the day-to-day responsibilities of caring for these special needs children did not represent a breach of its responsibilities. Accordingly, *R.T.* and *In re Isabella* do not apply here.

B. *Adoptability*

Father contends there was insufficient evidence of adoptability to support the order terminating parental rights. (See 366.26, subd. (c)(1) ["[I]f the court determines [based on the evidence presented at the section 366.26 hearing] . . . by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption"].) We disagree.[26]

"A finding of adoptability requires 'clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time.'" (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 13, quoting *In re Zeth S.* (2003) 31 Cal.4th 396, 406.) Clear and convincing evidence is evidence "sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Valerie W.*, *supra*, at p. 13.) We review a trial court's determination of adoptability for substantial evidence, keeping in mind the heightened standard of proof. (*In re R.C.* (2008) 169 Cal.App.4th 486, 491; see *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) "Although a finding of adoptability must be supported by

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[26] As set forth in respondent's brief, at the hearing, Father joined the children's attorney, who raised no objection to the finding that Monica was adoptable, but asserted that Jesus was specifically adoptable only by Griselda. Accordingly, he has forfeited any argument with respect to Monica's adoptability.

clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is 'likely' that the child will be adopted within a reasonable time." (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292, quoting § 366.26, subd. (c)(1).)

"Usually, the issue of adoptability focuses on the minor, 'e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor.' [Citation.] However, 'in some cases a minor who ordinarily might be considered unadoptable due to age, poor physical health, physical disability, or emotional instability is nonetheless likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child.'" (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408, quoting *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650; accord, *In re K.B.*, *supra*, 173 Cal.App.4th at p. 1292 ["It is well established that if a child has special-needs which render the child not generally adoptable, a finding of adoptability can nevertheless be upheld if a prospective adoptive family has been identified as willing to adopt the child and the evidence supports the conclusion that it is reasonably likely that the child will be adopted within a reasonable time"].) In determining whether a child is specifically adoptable, courts consider such factors as the length of time the child has been in the placement, the prospective adoptive parents' awareness of the child's special needs, the prospective adoptive parents' commitment to adoption, the nature of the bond between the child and the

prospective adoptive parents, and whether any legal impediment exists. (*In re Brandon T.*, *supra*, at pp. 1409-1410.)

Here, as noted, the prospective adoptive parents have been caring for both Jesus and Monica for many years and attending in an exemplary fashion to their special needs. The bonds between the couple and the children are strong. Claudia and Jessica have remained committed to the adoption since proposing it in 2013. No legal impediments were found to exist. Accordingly, the finding that Jesus, as well as Monica, was adoptable was fully supported by the evidence.

DISPOSITION

The October 2, 2015 order terminating parental rights and placing the children with Claudia and Jessica for adoption is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.