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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B297961
(Los Angeles County
Super. Ct. No. 18CCJP02199A)

A.B., a Minor,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Real Party in Interest.

ORIGINAL PROCEEDINGS. Petition for extraordinary writ. Rudolph
Diaz, Judge. Petition denied.

Children's Law Center of Los Angeles, Juan Valles and Elizabeth
Genatowski for Petitioner A.B.

Law Offices of Shep Zebberman, Asya Ovsepyan and Shep Zebberman
for Petitioner D.B.

No appearance for Respondent.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant
County Counsel, and Sally Son, Deputy County Counsel, for Real Party in
Interest.

Minor A.B. seeks writ review of the trial court's refusal to place her with her maternal grandfather D.B. (Grandfather) under Welfare and Institutions Code section 361.3, subdivision (a).¹ A.B. was removed from her mother's care while a patient at Children's Hospital Los Angeles (CHLA). A.B., aged six, suffered from severe intestinal problems, and her doctors believed that Mother had been removing A.B.'s blood from A.B.'s intravenous feeding line and injecting it into A.B.'s feeding tubes, thereby mimicking severe intestinal bleeding. After doctors determined Mother's conduct strongly suggested she suffered from Munchausen by Proxy, A.B. was detained, and after a long hospitalization, was ultimately placed with a medical foster care family. Numerous experts testified that Munchausen by Proxy is not curable and that the best possible placement for a victim of Munchausen by Proxy is in a foster home. The dependency court agreed, and denied Grandfather's request that A.B. be placed with him.

A.B., joined by Grandfather, contends the dependency court erred in denying placement with Grandfather because it failed to consider the factors set forth in section 361.3, subdivision (a) regarding the relative placement preference, failed to adequately state its reasons on the record as required by

¹ All statutory references herein are to the Welfare and Institutions Code unless otherwise noted.

section 361.3, subdivision (e), and failed to grant Grandfather unmonitored visitation. We disagree, and deny her petition.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Pre-Petition Background

1. A.B.'s Pre-Detention Medical History

A.B. has been a patient of CHLA since 2014, when she was admitted with liver failure at age nine months. Her condition resolved spontaneously.

By the time of the current proceedings in 2018, A.B.'s health had deteriorated to the point that A.B. was unable to feed normally due to gastric dysmotility (the inability of her intestines to function normally). Her nutritional needs were met with Total Parenteral Nutrition (TPN) through a central line (an intravenous tube placed into a large vein) (also known as a "PIC line"). A.B. also had two feeding tubes. One, a G-tube, was inserted into her stomach, while the other, a J-tube, was inserted into her intestines. She had a history of numerous infections with her PIC line, four of which involved more than one microorganism. Such polymicrobial infections were rare.

Beginning in May 2017, A.B. had multiple bleeding episodes that worsened. In June 2017, the child began to have rectal pain and had a low blood count, and began receiving twice weekly blood transfusions. In October 2017, because it was believed to be the source of her bleeding, most of the child's colon was removed. A portion of the intestine was diverted to an artificial opening in the abdominal wall to collect waste in an ileostomy pouch. In spite of this, A.B. continued to have blood in her feeding tubes and ileostomy pouch.

At CHLA, A.B. was classified under the complex care team and rotated between six doctors. A.B.'s current CHLA hospitalization, which led to these proceedings, was in February 2018 for abdominal pain and chronic gastrointestinal bleeding. She was in the hospital for five days to locate the source of GI bleeding. After being sent home on February 25, she was seen again the next day for a scheduled blood transfusion, but returned to the E.R. the next day with blood in her ileostomy pouch and a low blood count. A.B. was admitted to CHLA for anemia and chronic blood loss. A.B.'s doctor, Dr. Robyn Kuroki, was surprised at A.B.'s condition because A.B. had just received a blood transfusion. After a biopsy conducted on A.B.'s GI tract, doctors observed unusual burns. Although A.B. received half a liter of blood, she continued to lose blood.

At CHLA, A.B. had been subjected to multiple tests (scopes, MRIs, CT scans) to determine the source of the bleeding and to confirm a diagnosis. However, in spite of multiple evaluations, A.B.'s doctors had been unable to find the source of the bleeding. The hospital sought second opinions from hospitals in Texas and Boston, and A.B. was considered for an intestine transplant.

2. *Doctors and Hospital Staff Suspect Munchausen by Proxy, and A.B. Improves After Mother is Removed*

The doctors and staff and CHLA became suspicious that Mother had been withdrawing A.B.'s blood from the PIC line and injecting it into her feeding tubes, which lowered A.B.'s red-blood cell count, in an attempt to prolong A.B.'s stay at the hospital. Thus, after ruling out causes other than Mother, a care partner was placed beside A.B.'s bed for a week. It was during this time, in the early morning hours of March 28, 2018, that Mother was

visiting A.B. at the hospital. A.B. was under a blanket and a hospital worker observed Mother's hands under the blanket. The worker asked Mother to remove her hands, and when Mother did so, a syringe fell out. Mother picked up the syringe and threw it away.

The next day, A.B.'s blood values dropped, consistent with someone removing blood. At this time, law enforcement was contacted. After Mother was excluded from the child's room, A.B.'s blood values became "rock solid." A.B. did not require any additional transfusions, and no further blood was found in her ileostomy pouch.

The hospital's social worker spoke to A.B., who told her that when Mother provided medicine through the PIC line connected to the child's chest, Mother would tell her not to look. Mother had given her medicine with an orange syringe and that "red stuff goes through the tube." The child did not receive any medicine matching this description, confirming the suspicion that Mother was inserting blood into the child's feeding tubes.

3. *Detention—April 6, 2018*

A.B. was placed on a hospital hold at Children's Hospital. Mother reported to DCFS that A.B. has had health issues since she was a baby. A.B.'s liver failure resolved with no explanation, and A.B. had stomach issues and would not eat. According to Mother, A.B. eats only for "satisfaction" and receives all of her nutrients through the PIC line. Mother home schools A.B. through Valley Oaks Charter School and A.B. attends the school once a week for three hours. Mother denied physical or emotional abuse, drug use, and criminal history.

Dr. Anna Gay, one of A.B.'s doctors, told DCFS they had not yet set a discharge date for A.B. Now that CHLA had identified Mother as the source

of A.B.'s problems, the treatment team was in the process of determining a course of treatment and to decide how A.B.'s intestinal tract would function. The doctors planned to slowly introduce food to A.B. and this would take several months. Dr. Gay was concerned that Mother not have unsupervised access to A.B. and her medication, which would place A.B. at risk.

On April 6, 2018, the dependency court found substantial danger to A.B.'s health, and ordered her detained. The dependency court ordered a mental health and developmental assessment for A.B. Mother was given twice weekly monitored visitation in a neutral location, and Grandfather was given monitored visitation. The court set jurisdiction for June 6, 2018.

4. *Mother's Family Background*

Mother lived in Bakersfield. Grandfather lived down the street from Mother with his fiancée Crystal. Grandfather provided financial support to Mother; he owned Mother's home and recently purchased a car for Mother to help with transportation to CHLA. Grandfather owned an appliance repair business and employs over 75 people.

A.B. was at Grandfather's home every day and often stayed overnight. Grandfather was significantly involved in A.B.'s life, and had been part of the discharge plan for every hospitalization. Grandfather is familiar with A.B.'s medical needs and how to administer her medication through the tubes.

Grandfather's adopted daughter, Skylar, lived with Mother because Grandfather traveled a lot for work, and Mother was better able to manage Skylar's behavior. However, Mother had lost her foster care license after Skylar permitted a one-year old foster child, Skully, who was in Mother's care, to suffer burns in a hot bath.

Grandfather was aware that the hospital staff had some concern Mother was the cause of A.B.'s medical problems. However, Grandfather did not believe that Mother had been tampering with A.B.'s PIC line. Instead, Grandfather only observed that Mother was positively involved in A.B.'s treatment, and reported that Mother was offended that the staff had accused her of wrongdoing.

B. *Section 300 Petitions*

The initial petition filed April 5, 2018, alleged one count based upon Mother's conduct in causing A.B.'s medical condition.

On May 24, 2018, DCFS filed an amended petition alleging under section 300, subdivision (a) that Mother had inflicted nonaccidental harm on A.B. by tampering with A.B.'s medical equipment. On June 6, 2018, DCFS filed a second amended petition to add language to count a-1 that A.B.'s condition "would not ordinarily occur except as the result of deliberate, unreasonable or neglectful acts by the child's mother." Further, the second amended petition added two counts, one alleging emotional abuse under section 300, subdivision (c), and the second alleging cruelty under section 300, subdivision (i).

C. *Grandfather's PRI Investigation—April 20, 2018*

DCFS filed a negative pre-release investigation report on Grandfather. Grandfather had four previous referrals to children's services which were deemed unfounded. At his interview with the social worker, Grandfather reported that he lived with his fiancée, Crystal, and several adult children. Mother did not reside with the family but lived down the street. Grandfather wanted A.B. to be released to him, as he is the primary support system for

A.B. and Mother. He and Crystal are aware of the child's medical condition and needs.

In April 2018, the social worker discussed with Grandfather and Crystal their ability to protect A.B. from Mother. Grandfather stated he understands and supports DCFS's goals, and would set appropriate boundaries with Mother and monitor her visits with A.B. Grandfather did not understand what happened to A.B. at the hospital, stating that "[t]hey said that they found a syringe and they believe that [Mother] had a thing [to do] with this. I hate to believe that. I haven't made up my mind because I don't know the facts. [Mother] claims that she's done nothing. . . . I would be shocked if she did do something. She's always been trying to keep [A.B.] out of the hospital."

Grandfather had some EMT experience. The social workers evaluated Grandfather's home, which was clean, organized and well kept. A.B.'s room was filled with toys and clothing.

1. *Hearing, April 20, 2018*

At the pre-release investigation hearing, two of A.B.'s doctors testified she was a victim of Mother's Munchausen by Proxy.² In Dr. Susan Wu's experience, after a finding of Munchausen by Proxy, removal of the child from the parent is the best placement. Dr. Wu observed that supervision of

² Munchausen by proxy is a condition where parents cause illness in their child as a means of getting attention for themselves. The term encompasses both the perpetrator's motivations and the abuse suffered by the child. The term "factitious disorder imposed on another" (FDIA) focuses more on the psychopathology of the perpetrator, and the term "medical child abuse" focuses on the abuse suffered by the victim. The disorder is recognized in the DSM-V. Throughout the proceedings, the terms have been used interchangeably, although the medical professionals in the case understand the distinctions. For simplicity here, we refer to the disorder as "Munchausen by Proxy."

Mother “is extremely, extremely difficult.” The social history of Mother and Grandfather’s family was that of a family that all lived together and was very close, caring for each other’s children. Further, “[e]ven while in the hospital being supervised, there were—. . . she was still able to withdraw blood two times just because of the sheer difficulty in having close proper supervision.”

Dr. Anna Gay of CHLA expressed concern that because A.B.’s symptoms are esoteric, subtle and difficult to explain, a family member such as Grandfather might not be able to recognize if A.B. was being re-victimized. As a result, Dr. Gay did not believe it would be in A.B.’s best interest to be placed with Grandfather or any other relative.

The dependency court found the report to be negative and denied placement with Grandfather.

2. DCFS’s April 20, 2018 Section 385 Petition Regarding Mother’s Visitation

On April 20, 2018, DCFS filed an ex parte application pursuant to section 385 seeking to modify Mother’s visitation to prohibit her from bringing food items to A.B. during visitation. A.B. remained hospitalized, but Mother had brought the child a strawberry doughnut, knowing that A.B. was allergic to strawberries. A.B. had an allergic reaction. Mother claimed she did not know the doughnut was strawberry, but only knew that it had pink frosting.

Mother’s visitation was set for two hours a week, divided into one half-hour increments Monday through Friday. Mother was not to bring anything, and her hands were to be visible. Grandfather could accompany Mother.

E. *Grandfather's Section 388 Petition*

On May 2, 2018, Grandfather filed a section 388 petition, challenging the negative pre-release report and requesting that A.B. be placed with him, or in the alternative, that he have unmonitored or overnight visits with A.B. The dependency court set the matter for hearing on June 6, 2018.

DCFS's addendum report to Grandfather's section 388 petition stated Grandfather asserted he would maintain appropriate physical boundaries with Mother and A.B. However, he continued to make excuses for Mother's conduct. Hospital staff noted that Grandfather did not understand the scope of Mother's systematic harm to A.B., and believed Grandfather would allow Mother access to A.B.

F. *Jurisdiction*

1. *DCFS's Investigation*

DCFS's jurisdictional report dated May 25, 2018 stated A.B. remained in the hospital. A.B. told the dependency investigator (DI) that Mother had given her "red" medicine. "Mommy said I can't tell anybody . . . but I can tell you. She gave me medicine with a syringe with medicine that was red and she put it in my stomach." A.B. did not know why Mother had given her the red medicine, but Mother "told me not to tell anybody because sometimes, it's a secret."

DCFS reported that Mother wanted to bring A.B. home to die on hospice. Further, Mother demonstrated inappropriate behaviors that lacked boundaries regarding rules and regulations placed on her. DCFS did not recommend returning A.B. to Mother's care.

DCFS's interim review report dated May 31, 2018 stated A.B. remained hospitalized. Grandfather stated in his most recent interview with DCFS

that he remained baffled by Mother's conduct, but he was beginning to accept Mother's role in A.B.'s illness. Grandfather had stopped paying for Mother's house, and she was moving. Grandfather explained he had paid for Mother's house in order for A.B. to be closer to him, but since A.B. had been detained, there was no need for Mother to be nearby.

DCFS's interim review report dated June 7, 2018 detailed Grandfather's history with Kern County DCFS. Grandfather had been dishonest with Kern DCFS during the adoption process for Skylar because Grandfather failed to tell Kern DCFS that he was no longer married to his ex-wife. Grandfather claimed he did not "flat out lie" but rather was not forthcoming that he had separated from his ex-wife during the dependency proceedings. Grandfather asserted he would not lie with respect to A.B., and he would not let Mother near A.B.

Dr. Susan B. Turkel, chief of psychiatry at Children's Hospital, observed that "[a]llowing [Mother]'s continued daily visits, apparently directed toward family reunification, is confusing and detrimental in this situation. . . . [A.B.] should never be reunited with her mother or be alone with her mother in any circumstances." Mother's condition, Munchausen by Proxy, was not curable. Even with extensive psychotherapy, Mother would not stop her behavior, and would place A.B. at extreme risk.

On June 6, 2018, the court scheduled a trial setting conference for August 9, 2018, and hearings on August 16, 2018 on both the section 300 petition and Grandfather's section 388 petition.

On August 10, 2018, DCFS filed a supplemental report stating that A.B. remained hospitalized. The report included the March 2018 Advisor's Edition of the American Professional Society on the Abuse of Children (APSAC) and the APSAC Practice Guidelines for Munchausen by Proxy

(March 2018 Advisor). The March 2018 Advisor was a special edition on Munchausen by Proxy.

The March 2018 Advisor contained guidelines that reflected current knowledge about best practices related to identification, reporting, assessment, and management of Munchausen by Proxy. In cases of suspected Munchausen by Proxy, the Advisor cautioned that placement with a family member is insufficient to adequately protect the child. “[T]he relentless pressure by those with [Munchausen by Proxy] to gain access to and control over the child victim can wear down even the most resilient or well-meaning and skilled caregivers. In most cases, a specialized assessment is needed to fully ascertain their willingness and ability to protect the children from an abusive caregiver. Most frequently, the children are best placed with foster parents who do not know or interact with the suspected abuser.” “A rare exception may be made for a relative who has no personal history of [Munchausen by Proxy], believes the abusive behaviors may have occurred, agrees to protect the children, and has the ability to protect them. However, even the most well-intended, skilled, and committed relative may have great difficulty enduring unrelenting pressure by the abusive caregiver (or their proxies) to gain access to and control over the child victims.”

Dr. Anna Gay reported that 20 percent of victims of medical child abuse die after being reunited with a perpetrator.

On August 16, 2018, the matter was continued to September 7, 2018 for trial setting, and September 27, 2018 for trial.

2. *DCFS's September 7, 2018 Section 385 Ex Parte Regarding Mother's Visitation*

On September 7, 2018, DCFS filed a section 385 ex parte application regarding Mother's visitation. DCFS reported that A.B. had a surgery scheduled on September 3, 2018. On that date, Mother arrived at the hospital an hour early for her scheduled visit. Mother's regular social worker was not there, and Mother was informed she could wait in the recovery room for her regularly scheduled visit. Mother's regular social worker would not have allowed Mother into the recovery room. While in the recovery room, Mother managed to request a bathroom pass from staff and made her way to A.B.'s bedside. A nurse discovered Mother, unattended, with A.B. DCFS requested suspension of Mother's visitation. On September 17, 2018, the dependency court suspended Mother's visitation, but gave her 20 minutes a day monitored phone calls.

On October 19, 2018, DCFS reported that A.B. would be ready for discharge from CHLA on November 1, 2018. On November 1, 2018, A.B. was placed in a foster home with a couple who were trained to tend to her medical needs.

3. *Adjudication and Grandfather's Section 388 Petition—October 22, 2018*

On October 22, 2018, the dependency court heard both adjudication of the second amended petition and Grandfather's section 388 petition. At the adjudication hearing, Mother offered to waive reunification services and move to another state, on the condition that A.B. be placed with Grandfather. After Mother pleaded no contest to the allegations of the second amended petition, the court sustained the allegations of the petition and set December

7, 2018 for disposition and Grandfather's section 388 petition. On November 30, 2018, the court appointed an expert to examine Grandfather's suitability for placement pursuant to Evidence Code section 730. On December 7, 2018, pending receipt of the section 730 evaluation of Grandfather, the court set the matter and the section 388 petition for hearing on January 24, 2019.

E. *Disposition*

DCFS's Last Minute Information for the court dated January 24, 2019 reported that A.B. was doing well in foster care and had started elementary school in December. In January 2019, after the initial evaluator for Grandfather withdrew, the court appointed Dr. Beatrice Yorker.³ The disposition and section 388 hearings were continued to March 14, 2019.

On March 13, 2019, DCFS filed a supplemental report and response to Grandfather's section 388 petition. Dr. Anna Gay continued to opine that A.B. must be removed from Mother's care. Dr. Turkel further observed that placement of the victim of medical abuse with relatives of the abuser was usually not adequate to protect the child.

DCFS reported concerns with the Evidence Code section 730 evaluation prepared by Dr. Yorker. Dr. Yorker had no experience with custodial and dependency proceedings, and she did not read letters provided by medical experts with knowledge of A.B.'s case, including Dr. Turkel.

1. *Dr. Yorker's Report Dated March 11, 2019*

Dr. Yorker recommended that A.B. remain in the primary care of the foster parents for the next three years, with custody to become joint between the foster parents and Grandfather after that. Dr. Yorker met with

³ Dr. Yorker is also known as Dr. Schumacher.

Grandfather and Crystal at their home in February 2019. Dr. Yorker followed the protocol in the March 2018 Advisor, “Munchausen by Proxy Risk Assessment, Support, and Treatment of Spouses and Other Family Caregivers” to select the questions to ask Grandfather and Crystal. Both Grandfather and Crystal now believed Mother to be a “master deceiver.” Grandfather had spoken to Mother about A.B.’s dramatic drops in her hemoglobin, but Mother refused to accept any responsibility. Looking back, Crystal could see how Mother thrived from the attention and fundraising on social media.

Grandfather had cut Mother off financially. Since September, when it became obvious to Grandfather that A.B. was not safe with Mother, he and Crystal had considered getting a restraining order against Mother, and they installed an outdoor camera system so that Mother could not “drop in” at any time. Mother currently lived with a relative of her own mother about half an hour away. They still saw her several times a month, and Mother worked for Grandfather’s company, although Grandfather stated she could be required to work remotely.

Dr. Yorker met with A.B., who was living with her foster mother and foster brothers aged 11 and 18. A.B. was doing well in foster care, and was very attached to her foster mother and brothers. A.B.’s ileostomy bag had been removed, permitting her to use the toilet. One of her tubes was removed, and she had decreased her tube feedings and increased her food intake. The foster mother indicated she wanted permanence with A.B., and wanted educational and medical decision-making rights. The foster mother believed it would be difficult for Grandfather and Crystal to protect A.B. from Mother. Mother still saw Grandfather and Crystal at their home. Mother had sent the foster mother a letter thanking her for taking care of A.B.

Dr. Yorker spoke with A.B.'s therapist, who told her A.B. was adjusting to school, as she had never experienced a classroom. The foster mother was providing a nurturing and stable family environment and the foster mother's medical knowledge was instrumental in A.B.'s recovery. The therapist was concerned that Mother remained in Grandfather's life, although Grandfather and Crystal provided continuity with A.B.'s birth family.

2. *Dr. Turkel's Letter*

In a March 8, 2019 letter, Dr. Turkel explained that "[w]ith deception at its core, [Munchausen by Proxy] is an elusive, potentially lethal, and frequently misunderstood form of child abuse that has been difficult to define, detect and confirm." Dr. Turkel strongly recommended against placing A.B. with Grandfather and Crystal.

On March 14, 2019, the court set the disposition hearing and Grandfather's section 388 hearing for April 18, 2019.

3. *DCFS Progress Report*

On April 17, 2018, DCFS filed its progress report for the hearings. A.B. remained with her foster parents. In April of 2019, Grandfather told the DI that he now understood Mother's role in A.B.'s illnesses. Grandfather also understood that "a cure [for Mother] is unheard of in these cases."

4. *Disposition Hearing Testimony*

(a) *Dr. Turkel*

When Grandfather was present, Dr. Turkel observed Mother would interact with A.B., but Grandfather would not, and that Grandfather's interaction with A.B. was "sterile." In Dr. Turkel's opinion, A.B. should not

be with anyone in the family, and she did not recommend visitation with Grandfather because A.B. was settling into her foster home; in such cases, visits can be unsettling, and furthermore, Grandfather did not show much affection to A.B. when Dr. Turkel observed them.

(b) *Dr. Susan Wu*

Dr. Susan Wu testified Munchausen by Proxy is often found where there is a dysfunctional relationship between the perpetrator and his or her spouse or significant other or parents. “So it is often a milieu within the family that leads to this occurring.” Dr. Wu had reviewed the March 2018 Advisor. “I think we’ve seen during the course of her hospitalizations that supervision is extremely, extremely difficult. . . . [Mother’s family all] live very close together. They’re caring for each other’s children.” Dr. Wu noted that even while in the hospital under supervision, Mother was able to withdraw blood from A.B.

(c) *Grandfather*

Grandfather testified that as of April 2018, he resided with Crystal, Alyssa (Crystal’s daughter), his son Brandon, Grandfather’s adopted son Benjamin, and adopted daughter Skylar. While married to his first wife, Grandfather had over 23 foster children in his home. Mother offered to help with Skylar because Grandfather was working more and was not at home.

Grandfather’s business had 90 employees. Mother had worked for him off and on for 10 years. Grandfather worked between 30 and 50 hours a week and can work remotely.

At the time the bloody syringe was found, Grandfather took Mother’s explanation at face value. Now, he understood that Mother had been hurting

A.B. since the very beginning, and Mother had tried to kill A.B., although Mother had denied to him that she had done so. Dr. Yorker explained to him that the abuse started when A.B. was nine months and suffered from liver failure. Grandfather understood that the parent could not have access to the child, and that the parent would manipulate situations in order to gain access to the child.

When asked about how he felt that Mother was able to abuse A.B. for so many years in plain sight, Grandfather said that he felt betrayed and manipulated by Mother into helping her. Currently, he does not support Mother financially and rarely sees her, even though she works in one of his offices. She does not report directly to him. He would cut off all ties to Mother if A.B. was in his care. Dr. Yorker made Grandfather aware that Mother was financially exploiting A.B. with a “Go Fund Me” page.

Grandfather pledged to do everything in his power to keep A.B. away from Mother.

(d) *Dependency Investigator Lissa Miller*

DI Lissa Miller testified that she believed it was “premature” to place A.B. with Grandfather and unmonitored contact was also premature. She found Grandfather “extremely unprepared” to deal with the medical child abuse suffered by A.B.

(e) *Dr. Yorker*

Dr. Yorker has made placement recommendations in Munchausen by Proxy cases. Dr. Yorker testified there are cases where it is in a child’s best interests to be placed with a relative. “The bar is very high because this is so insidious and most of the perpetrators are articulate, convincing, and

sympathetic, and so that is different from the average child abuse situation.” In considering a placement, she would evaluate whether the house was safe, there were safeguards in place, whether the children are attached and bonded, and whether the children were getting appropriate education. She has assessed multigenerational abuse.

She has made only one relative placement recommendation in a case of Munchausen by Proxy. Ninety percent of the time she has not recommended family placement. Dr. Yorker was aware there were concerns with Grandfather because he misrepresented his relationship with some of the foster children, and that caring for A.B. was a “brand new concept to him.”

Dr. Yorker believed persons with Munchausen by Proxy will attempt to enlist the support of their relatives, who come to believe the perpetrator is the victim of an incompetent medical system. When she first met with Grandfather and Crystal, they thought Mother was misguided and hypervigilant medically. However, Dr. Yorker believed Grandfather’s understanding of Mother’s condition had changed. Grandfather and Crystal felt tricked by Mother, given the emotional and financial support they had provided. Dr. Yorker believed they were genuine.

Dr. Yorker acknowledged there is a presumption that relative placement is not recommended in Munchausen by Proxy cases. However, sometimes placement with family is beneficial for the child. Dr. Yorker admitted she made a relative placement where the child died. She did not recommend placement with Grandfather right away because of A.B.’s need for stability and the foster mother’s home was a good placement. A benefit in A.B. knowing her Grandfather will permit A.B. to sort out her history when she is older.

2. *Dependency Court Ruling*

The dependency court ordered A.B. removed from Mother's care, noting that Dr. Yorker did not actually recommend placement with Grandfather. Relying on the March 2018 Advisor, the dependency court stated, "[m]ost children who are suspect victims of caregiver related abuse are best placed with foster parents who did not know or interact with the suspected abuser. A rare exception may be made for a relative who has no personal history of the abuse and believes the abusive behavior may have occurred, agrees to protect the child, and has the ability to protect the child. . . . Even the most well intended, skilled, and committed relatives may have great difficulty enduring unrelenting pressure from the abusive caregiver to gain access to and control over the victim. In general, foster parents are the best protectors of the child if they do not have responsibility for monitoring any visits and if the suspected abuser doesn't have the name, address, phone numbers of family, et cetera."

The court continued, "This is the scenario we are dealing with. This is a very serious case, and there is really no room for error. There's too much at stake. This child was near death but for the unrelenting efforts on the part of doctors. [¶] They were fooled for years. I grant you [Grandfather] was also. I won't say fooled. I think he was not aware. . . . Does he have the ability at this stage to protect this child? . . . I have concerns about his candor and credibility. I would not go so far as to say he's a liar." The court discussed the situation with Skylar and Skully. "I think it would be [Grandfather's] intention to take good care of this child, but Mother will always be around. This is a close family. . . . After a period of time, things will soften up for

[Grandfather], and I acknowledge I don't believe he's had standing to obtain a restraining order."

Observing that Dr. Yorker did not recommend placement with Grandfather, but recommended unmonitored visits and expansion of visits, the court found that this was not appropriate. The court stated it had given much consideration and priority to Grandfather, but "[r]ight now I don't think the court can find it's in the best interest to place this child with [Grandfather]. I think the risk is still there. . . . Mother is still out there and intends to be involved. By her phone calls, by her letters, she's not going to give up. She'll be around a while and make every effort to be part of [A.B.]'s life. [¶] I am not sure what [Grandfather] is going to be able to do when things are a little different in the [next] couple of months."

The court denied Grandfather's section 388 petition. Mother was denied visitation and reunification services. Grandfather was given two hours of monitored visitation twice per week, and DCFS was given no discretion to liberalize visitation. The court set a selection and implementation hearing for September 6, 2019.⁴

DISCUSSION

A.B., joined by Grandfather, argues that the dependency court abused its discretion in refusing to place her with Grandfather pursuant to section 361.3, subdivision (a). She contends the court applied the wrong legal standard because it failed to consider the factors set forth in section 361.3 and further because it failed to state for the record pursuant to section 361.3, subdivision (e) its reasons for declining placement with Grandfather. Second,

⁴ On August 29, 2019, we issued a stay of the section 366.26 hearing.

she argues that the dependency court erred in failing to order unmonitored visitation with Grandfather.

Subdivision (a) of section 361.3 mandates that when “a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement.” The best interest of the child is the fundamental goal of the juvenile dependency system, underlying the three goals of child safety, family preservation, and timely permanency and stability. (*In re Maria Q.* (2018) 28 Cal.App.5th 577, 591.) In assessing any relative seeking to have the child placed in their care, the court must consider eight factors enumerated in subdivision (a)(1) through (8),⁵ as well as any other relevant facts, and

⁵ Those factors are: (1) the best interest of the child, including special physical, psychological, educational, medical, or emotional needs; (2) the wishes of the parent, the relative, and child, if appropriate; (3) the provisions of Part 6 (commencing with section 7950) of Division 12 of the Family Code regarding relative placement; (4) placement 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, as provided in section 16002; (5) the good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect; (6) the nature and duration of the relationship between the child and the relative, and the relative’s desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful; (7) the ability of the relative to do the following: (A) provide a safe, secure, and stable environment for the child; (B) exercise proper and effective care and control of the child; (C) provide a home and the necessities of life for the child; (D) protect the child from his or her parents; (E) facilitate court-ordered reunification efforts with the parents; (F) facilitate visitation with the child’s other relatives; (G) facilitate implementation of all elements of the case plan; (H)(i) provide legal permanence for the child if reunification fails; (ii) however, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative; (I) arrange for appropriate and safe child care, as necessary; and (8)(A) the safety of the relative’s home. For a relative to be considered appropriate to receive placement of a child under this section on an emergency basis, the relative’s home

exercise its independent judgment concerning the relative’s request for placement. (*Id.* at p. 592; *In re A.K.* (2017) 12 Cal.App.5th 492, 498.)⁶

Although the statute requires the court to state its reasons under subdivision (e) of section 361.3 for the record, any failure to do so is harmless where the record itself indicates that the dependency court would not have placed the child with the relative. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.) Where “the reasons for denying placement are clear from the evidence and discussion at the hearing and support the court’s decision, the court’s failure to make findings is harmless.” (*Ibid.*) We will not reverse where it is not reasonably probable such findings, if made, would have been in favor of Grandfather.

1. *The Record Demonstrates the Dependency Court Sufficiently Considered of Factors of Section 361.3, Subdivision (a) in Denying Placement to Grandfather*

A.B. contends the trial court failed to consider all factors of section 361.3, subdivision (a), instead only touching on subdivisions (a)(1), (a)(5) and (a)(6), and wholly failed to consider subdivisions (a)(2) and (a)(7). She argues that in relying on the March 2018 Advisor, the court failed to use its

shall first be assessed pursuant to the process and standards described in section 361.4.

⁶ When section 361.3 applies to a relative placement request, the juvenile court must exercise its independent judgment rather than merely review DCFS’s placement decision for an abuse of discretion. The statute itself directs both the “county social worker and court” to consider the propriety of relative placement. (§ 361.3, subd. (a).) The cases also discuss the relative placement preference in the context of an independent determination by the juvenile court. “[T]he statute express[es] a command that relatives be assessed and considered favorably, subject to the juvenile court’s consideration of the suitability of the relative’s home and the best interests of the child.” [Citation.]” (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033; *In re Miguel E.* (2004) 120 Cal.App.4th 521, 547–548.)

independent judgment because it read from the Advisor's statement that relative placement is a "rare exception" and conducted no further analysis of the question; it did not consider Grandfather's willingness to protect A.B., such that Grandfather could be the "rare exception" for placement of Munchausen by Proxy victims.

We disagree. In Munchausen by Proxy cases, the experts testified uniformly that Munchausen by Proxy victims cannot, under any circumstances, have any contact with the abusive parent. The condition is often fatal to the victim and the abuser cannot be cured; thus, the abuser will almost certainly reoffend if given access to the child victim. Further, because the abusive parent has little insight into the condition and operates under a compulsion to abuse the child in order to garner attention, the parent becomes adept at manipulating others to gain access to the child victim. A third-party foster family eliminates this risk.

On the other hand, the experts testified in detail concerning the problem that exists in a family with porous boundaries, such as Grandfather's family, where the risk is increased that the abuser will access the child victim. As set forth in the March 2018 Advisor, "the relentless pressure by those with [Munchausen by Proxy] to gain access to and control over the child victim can wear down even the most resilient or well-meaning and skilled caregivers." Further, as detailed in the March 2018 Advisor, the rare exception for a relative with no history of Munchausen by Proxy requires the relative to believe the abusive behaviors have occurred, agree to protect the child, and have the ability to protect them.

Here, Grandfather was slow to accept that Mother's behavior was the root of A.B.'s multiple hospitalizations. Indeed, Grandfather had been supporting her efforts by providing her with a house and a vehicle to get to

and from CHLA, and Grandfather had been “part of the child’s discharge plan from every hospitalization.” While Grandfather had spent the past year since A.B.’s detention educating himself and attempting to distance himself from Mother, the record discloses that Mother was still visiting his home, still worked for Grandfather, and lived not too far away with relatives of her own mother. Although Grandfather states he is very well meaning and wants the best for A.B., Grandfather has had a history of untruthfulness with Kern County Children’s Services. These facts indicate that his words cannot be taken at face value, and given his slowness to agree that Mother was the cause of A.B.’s illness, it is likely any boundaries he attempts to establish with Mother will easily be breached. Indeed, Mother has demonstrated her relentless efforts to remain in contact with A.B. These facts raise caution flags that Mother might yet be able to gain access to A.B. if Grandfather is granted custody, particularly after some time has passed. (§ 361.3, subd. (a)(7)(D) [ability of relative to protect the child from his or her parents].) As the dependency court observed, Mother would not give up in her efforts to be part of A.B.’s life. “I am not sure what [Grandfather] is going to be able to do when things are a little different in the [next] couple of months.”

Further, A.B.’s best interests require that she remain with her medically trained foster family. She has suffered not only permanent physical disability from Mother’s conduct, but she has been socially and emotionally damaged. The hospital and A.B.’s doctors have indicated it will take a long time for A.B. to heal from Mother’s abuse. Given that she has only begun to make strides in her foster home, removing her is not in her best interests. (§ 361.3, subd. (a)(1) [the best interests of the child, including emotional, physical, and medical needs].)

Here, although the trial court did not expressly refer to the eight factors of section 361.3, subdivision (a), the record demonstrates that it based its decision on the applicable factors, namely:

(a)(1) the best interests of A.B., including her emotional, physical, medical, and education needs, given the damage done by Mother's physical and emotional abuse;

(a)(2) Grandfather's placement preference;

(a)(5) the good moral character of relative seeking placement. The dependency court considered Grandfather's prior untruthfulness;

(a)(6) the relationship between Grandfather and A.B. Dr. Turkel testified it was strained, although the foster mother considered A.B. to be fond of Grandfather); and

(a)(7)(D) Grandfather's ability to protect A.B. from Mother, given the insidious nature of Munchausen by Proxy and the porous family structure.

Given the strength of the record here, we cannot find any error in the dependency court's failure to make express findings for the record.

2. *Grandfather's Request for Unmonitored Visitation*

A.B. did not make any additional arguments, aside from the arguments made in connection with the dependency court's section 361.3, subdivision (a) ruling, why Grandfather should be granted unmonitored visitation. We review the dependency court's visitation order for abuse of discretion. (*In re Maya L.* (2014) 232 Cal.App.4th 81, 102.)

Here, there was no abuse of discretion. Grandfather had only recently admitted that he understood the gravity and depth of Mother's abuse of A.B. The family's boundaries were weak, in spite of Grandfather's claims that measures would be taken, and Mother had demonstrated great skill at

manipulating situations in order to gain access to A.B. Therefore, the court was within its discretion to limit Grandfather's visitation to monitored visitation in order to protect A.B. unless and until such time as Grandfather has truly demonstrated his ability to keep A.B. safe from Mother.

DISPOSITION

The petition for extraordinary writ is denied.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

MANELLA, P. J.

CURREY, J.