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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.L. et al., Persons Coming  
Under the Juvenile Court Law.

B267939

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK60751)

Plaintiff and Respondent,

v.

GENE L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Michael Miller, Commissioner. Affirmed.

Law Offices of Linda M. Nakamura and Linda M. Nakamura for Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Jacklyn K. Louie, Principal Deputy County Counsel, for Respondent.

Gene L., the grandfather of 11-year-old David and nine-year-old Mia L. (the children), appeals a juvenile court order denying his petition pursuant to Welfare and Institutions Code section 388.<sup>1</sup> The petition sought a change in juvenile court orders to allow Gene L. (grandfather) overnight weekend visitations with the children and eventual placement with him. We find no error and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The record in this case is minimal. From it we discern that the children were legally freed from their parents in December 2013. In 2015, they remained dependents of the juvenile court pursuant to section 300, subdivisions (a) and (b). An order for suitable placement entered in January 2008 remained in effect. In June 2015, grandfather filed a section 388 petition, seeking a change to the court's December 2014 order of "suitable placement in full force and effect."<sup>2</sup>

According to grandfather, beginning in November 2014, the children's foster mother and the Los Angeles County Department of Children and Family Services (DCFS) social worker repeatedly failed to return his calls to arrange visits with the children. In January 2015, the social worker told grandfather there was "a court order to deny family members any visitation." In March 2015, a DCFS supervisor told grandfather he would

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> On appeal, grandfather indicates the children had been placed with grandfather's ex-wife who later committed suicide. The citation to the record supporting this statement refers only to grandfather's section 388 petition, in which he mentioned the grandmother's suicide.

need a court order to set up visitation with the grandchildren. Grandfather also reported that in March 2015, he spoke with the caretaker about visiting the children. The caretaker told father she had a meeting with the social worker and the children's psychologist, "and they feel it is not in the children's best interest and he would not be able to see them."

The section 388 petition indicated grandfather "thought [the caretaker] was a friend. She promised that she would allow him to see his grandchildren. He would never have allowed them to be placed with her if he knew that she was not going to let him see them. She has terminated all visitation with his grandchildren." The petition asserted court orders allowing grandfather overnight visitation and eventual placement with him would be better for the children because: "[The children] know [grandfather] and love to be with him. There is no reason for him to be shut out of their lives. They have suffered enough with the suicide of their grandmother. He is their biological relative. Their best interests would be served because he would allow them to know their extended family and they know him."

The juvenile court denied grandfather's section 388 petition without a hearing. Grandfather timely appealed.<sup>3</sup>

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<sup>3</sup> After filing his notice of appeal, grandfather submitted a Request for Disclosure of Juvenile Case File to the juvenile court. (See § 827, subd. (a)(1)(P); Cal. Rules of Court, rule 5.552.) Grandfather sought: "All Juvenile Court sustained petitions, Court reports, minute orders, home studies, Title 20's of social workers, and adoption file if any in the case of [the children]." The juvenile court ordered disclosure of grandfather's section 388 petition, two minute orders related to the petition, and grandfather's notice of appeal. Grandfather did not separately appeal the juvenile court's disclosure order. (*In re Gina S.* (2005))

## DISCUSSION

As we understand his arguments, grandfather contends the juvenile court erred in denying his section 388 petition seeking placement of the children with him, pursuant to the section 361.3 relative placement preference, and seeking overnight visitation with the children.<sup>4</sup> We find no abuse of discretion.

Under section 388, a person with an interest in a dependent child may petition the court “to change or set aside a prior order ‘upon grounds of change of circumstance or new evidence.’ (§ 388, subd. (a)(1); see also Cal. Rules of Court, rule 5.570(a).) The juvenile court shall order a hearing where ‘it appears that the best interests of the child . . . may be promoted . . .’ by the new order. (§ 388, subd. (d).) Thus, the [petitioner] must sufficiently allege *both* a change in circumstances or new evidence *and* the promotion of the child’s best interests. [Citation.] [¶] A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. (Rule 5.570(d)(1); [citation].) While the petition must be liberally construed in favor of its

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133 Cal.App.4th 1074, 1081 [An order denying a petition under section 827 is appealable as a final judgment]; *In re Keisha T.* (1995) 38 Cal.App.4th 220, 229.)

<sup>4</sup> Section 361.3, subdivision (a), provides, in relevant part: “In any case in which 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 of the child with the relative, regardless of the relative’s immigration status.”

sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child's best interests. [Citation.]" (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157, fn. omitted.)

"The juvenile court's determination to deny a section 388 petition without a hearing is reviewed for abuse of discretion. [Citations.] We must uphold the juvenile court's denial of appellant's section 388 petition unless we can determine from the record that its decisions "exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citations.] [Citations.] [¶] . . . "After the termination of reunification services. . . "the focus shifts to the needs of the child for permanency and stability" [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.' [Citation.]" (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

On the record before us we can only conclude the juvenile court did not abuse its discretion in denying grandfather's section 388 petition.<sup>5</sup> Although grandfather invokes the relative

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<sup>5</sup> We note it is the appellant's responsibility to provide an adequate record on appeal. The record grandfather has provided here is notably abbreviated. It does not include any minute orders or DCFS reports regarding the children's placements, case records indicating whether there were any visitation orders before grandfather filed his section 388 petition, or any information regarding the children's relationship with

placement preference of section 361.3, it is well established the preference does not apply when, as in this case, parental rights have been terminated and the children have been freed for adoption. (*In re K.L.* (2016) 248 Cal.App.4th 52, 66; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1031.) Aside from limiting contact with him, grandfather did not allege the children's placement with the caretaker was in any way unsuitable. Thus, to the extent grandfather contends his section 388 petition was a request that the juvenile court consider placing the children with him in accordance with the relative placement preference, we find no error.

“Once a dependent child is freed for adoption, the agency to which the child is referred for adoption is responsible for the child's custody and supervision. The Agency is entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. [Citations.] [¶] . . . . The court retains jurisdiction over the child to ensure the adoption is completed as expeditiously as possible and to determine the appropriateness of the placement. [Citations.] . . . . [¶] The court cannot substitute its independent judgment for that of the Agency; rather, the court is limited to reviewing whether the Agency ‘abused its discretion in placing the minor or in determining that the placement, once made, remains appropriate.’ [Citation.] ‘In other words, the court must assess whether [the Agency] acted arbitrarily and capriciously, *considering the minor's best interests.*’ [Citations.]”

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grandfather throughout the proceedings. However, given the posture of the case and the legal principles applicable to grandfather's arguments, we may evaluate grandfather's claims despite the extremely limited record.

(*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71-72; *In re Mickel O.* (2011) 197 Cal.App.4th 586, 618.)

Grandfather's section 388 petition offered little information about his relationship with the children. It did not explain to what extent he had regular visitation with them in the past, such that it would be in the children's best interests to change their placement because the caretaker restricted his visits. Further, according to grandfather's own petition, the children's caretaker informed him she was not facilitating visits because the DCFS social worker and the children's psychologist recommended against visitation with grandfather. If true, this suggests neither overnight visitation nor placement with grandfather would be in the children's best interests, and that DCFS did not act arbitrarily and capriciously in its placement or visitation decisions. We cannot conclude the juvenile court abused its discretion in denying grandfather's section 388 petition.

#### **DISPOSITION**

The juvenile court order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.