Children's Law Center of California
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Relative Placement Case Law Summary

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In re Maria Q. (2018) 28 Cal.App.5th 577; Fourth Appellate District, Division One

Four siblings (two girls and two boys) were removed from their parents in 2013. After some placement changes the girls were placed together and the boys were placed together. The girls remained placed in the same placement throughout the pendency of the case. In 2014, the maternal aunt came forward and asked for placement. The agency did not investigate aunt as a potential placement. Reunification services were terminated in 2014 and a section 366.26 hearing was held in 2016. At that hearing, both sibling sets were ordered to remain in foster care. In May of 2017, maternal aunt got in touch with the agency again and requested placement of the children. She filed a section 388 petition in August of 2017 seeking placement of the children. After a contested hearing, the juvenile court denied aunt's request because the boys were placed in an adoptive home and the girls' caregivers wanted to adopt and the girls did not want to be moved. Aunt and mother appealed, arguing that the relative placement preference applied even in post-permanency phase of the proceedings.

Affirmed. The issue is whether the relative placement preference set forth in section 361.3 applies when a child remains in foster care after a section 366.26 hearing. The Court of Appeal held that whether the preference applies depends on when the relative placement issue arises in the proceedings. In the beginning of the case and during the reunification period, the agency and court are to give preference to a relative's request for placement and must consider the factors listed in section 361.3(a). The Appellate Court found in *In re Isabella G.* (2016) 246 Cal.App.4th 708 that the relative placement preference applied even when reunification has ended, if the relative came forward during the reunification period and the agency ignored the relative's request. However, the court in *Isabella G.* did not consider whether the relative placement preference should be applied if the court only becomes aware of the relative placement issue after the section 366.26 hearing is held.

The statutory preferences set forth in section 366.26 indicate that the relative preference does not apply at the permanency plan hearing. The juvenile court may be called upon to consider a relative's request for placement at a permanency plan hearing and in that situation, the court must consider the factors set forth in section 361.3. A relative who seeks placement at post-permanency is seeking to modify the child's permanency plan. In order to do that, the relative must file a motion under section 388 that shows changed circumstances and that the request would be in the child's best interest. If the motion shows changed circumstances, the court must proceed under section 366.3(d) and set a section 366.26 hearing. At the section 366.26 hearing, the court can consider placement with a fit and willing relative if adoption or guardianship is not an option. Due to the Legislatures preference for the more permanent plans of adoption and legal guardianship the court may only consider placement with a relative in post-permanency hearings if the adoption or legal guardianship are not viable options for the child.

When determining the section 388 petition, the court should first decide whether the petition makes a prima facia showing that the relative is fit and willing to care for the child and if so, set a post-permanency hearing under section 366.3. The court must direct the agency to submit a report for the hearing. Although the trial court only proceeded under section 388 the error was harmless as the record supports that it would have been detrimental to remove the children from their caregiver's home.

In re M.H. (2018) 21 Cal.App.5th 1296; First Appellate District, Division Three

M.H. was detained shortly after his birth due to his positive toxicology screen for methamphetamine and cocaine. M.H. was placed in a non-relative foster placement. Although the mother was offered family reunification services, the agency recommended terminating the mother's services at the section 366.21(e) hearing. In the section 366.21(e) report, the agency stated M.H.'s maternal great aunt, who lived in Minnesota, was interested in placement of the child and that a request under the Interstate Compact on the Placement of Children (ICPC) had been initiated. The report stated that the caregivers were interested in adopting. Approximately 10 months after M.H. was initially placed with the caregivers, the agency notified the court that the child's placement would be changed in a few months because the maternal great aunt had been approved for placement. Minor's counsel objected and there was a contested hearing on the issue of placement. Ultimately, the juvenile court found that the caregiver preference under section 366.26(k) applied and denied the agency's request to change placement. The agency timely appealed.

At the time of the decision, section 361.3 gave relatives of a certain degree preference for placement when a child is removed from parental custody. The agency's argument that the relative placement preference was applicable in this case fails because the preference set forth in section 361.3 did not extend to a great aunt at the time the contested placement hearing took place. (*Since January 1, 2018 this law has changed.*) In addition, the relative preference is only applicable after disposition if the child needs a new placement. Here, the child was bonded to the caregiver and the change of placement was not necessary. The appellate court pointed out that the court is obligated to make decisions that comport with the child's best interest and section 361.3 does not create a presumption that relative placement is in a child's best interests.

The caregiver preference set forth in section 366.26(k) only applies when adoption has been approved as the permanent plan or the child has been freed for adoption. Here, the child's permanent plan had not yet been selected and he had not been freed for adoption, so the caregiver preference was inapplicable. To establish that change of placement was necessary, the agency had the burden to show that there were changed circumstances that make changing placement in the best interests of the child. The juvenile court did not abuse its discretion in denying placement with the relative since M.H. was well bonded with his caregivers. While the agency has broad discretion, the juvenile court maintains an oversight role when a child is removed from a caregiver who has been or meets the criteria to be designated a prospective adoptive parent.

In re Isabella G. (2016) 246 Cal.App.4th 708; Fourth Appellate District, Division One

Isabella's parents lived with the paternal grandparents when she was born in August of 2011. When Isabella was three months old, mother moved out of the home and left Isabella in paternal grandmother's care. Paternal grandmother was Isabella's primary caretaker because father was in and out of jail. While visiting her maternal grandparents on a weekend visit the parents took Isabella and refused to return her despite the objection of both sets of grandparents. Within a week, Isabella was in the custody of the agency after her parents were arrested on drug related charges. Both sets of grandparents requested placement. The grandparents required an exemption of their old criminal conviction prior to placement. Paternal grandmother visited Isabella every day. At a team decision making meeting (TDM) the family suggested that Isabella be placed with a non-related extended family member (NREFM) while placement with the grandparents was pending. The social worker told the grandparents that a home assessment would take one to three months and that the agency did not like to place children in more than two placements in a year.

During Isabella's placement with the NREFM, paternal grandmother visited with Isabella every weekend and sometimes up to three times a week. Isabella often told the NREFM that she missed grandmother and the NREFM would arrange for grandmother to come visit. At a second TDM, held shortly after the six month review and a year after their first request for placement, paternal grandparents again requested placement. The agency opposed moving Isabella and said that a change in placement was not necessary. The agency agreed to assess the grandparents' home as a contingent placement. That assessment did not occur.

After reunification services were terminated to the parents, the grandparents hired an attorney and filed a section 388 petition seeking placement of Isabella. The juvenile court ruled that the relative placement preference did not apply because reunification services had been terminated. The juvenile court applied the caregiver adoption preference under section 366.26(k) and found that it would not be in Isabella's best interests to remove her from the NREFM. Grandparents and father appealed.

Reversed and remanded. The agency conceded that the juvenile court erred when it applied section 366.26(k) before selecting a plan of adoption or terminating parental rights. However, the agency argues that the relative placement preference did not apply because the grandparents' petition for placement was filed after the reunification period and no new placement was necessary. The appellate court held the agency was wrong, stating that the record shows a disregard for the legislative preference for relative placement. The appellate court held that the relative placement preference applies at least through the reunification period and that the social worker is obligated to assess the relative whether or not a new placement is necessary. Moreover, there is no statute or case law that precludes the application of the relative placement preference after the reunification period, even when no new placement is necessary. Furthermore, a relative is not required to file a section 388 petition to trigger a home assessment, the relative only needs to request placement. The relatives repeatedly requested placement and were not assessed until they filed a 388 petition after waiting a year and a half for an assessment. The court's error in not applying the relative placement preference was not harmless. The juvenile court applied a generalized best interest test rather than evaluating the relevant statutory criteria set forth in section 361.3 which led to a miscarriage of justice.

In re R.T. (2015) 232 Cal.App.4th 1284; First Appellate District, Division Three

R.T. was removed from parents at birth because of drug abuse, domestic violence and their failure to reunite with a sibling, Gabriel. Over father's objection, R.T. was placed with Victoria, who was father's ex-girlfriend and also Gabriel's caregiver. Father requested that two of his sisters be assessed for placement, and the same paternal aunts requested placement of R.T. when he was two weeks old. The agency initiated home safety inspections but told paternal aunts it favored keeping the child in his current placement with Victoria. At the jurisdiction/disposition hearing, the court denied parents' request to place R.T. with one of the paternal aunts and her husband, and followed the agency's recommendation to deny parents reunification services. Without waiting for the completion of the relatives' home assessments, the court ordered a permanent plan of placement with Victoria and her husband. Paternal aunts' home assessments were completed and approved when R.T. was three-months old, but the agency refused to consider moving R.T. from his placement, and there was no indication in the record that the agency evaluated the relatives for placement under section 361.3. When R.T. was four months old, D.K. and R.K. (paternal aunt and uncle) filed a section 388 petition seeking placement of R.T., asserting they had been denied preferential consideration for placement and expressing their desire for custody and adoption.

The trial court held a series of evidentiary hearings but did not rule on the motion until ten months after the filing of the section 388 petition when R.T. was 14 months old. The court denied the motion, finding that the agency's decision to place R.T. with Victoria was reasonable and logical at the time it was made, that the relative preference required by section 361.3 applied only to placement decisions made at disposition, and that it was not in R.T.'s best interest to be moved from Victoria's home because he was bonded to her, having lived there for 14 months. At the same time the section 388 motion was filed, parents pursued efforts to relinquish their parental rights and designate paternal aunt and uncle as the adoptive parents. The agency refused to sign the acknowledgment of receipt of relinquishment forms, and told parents it would accept relinquishment only if they designated Victoria and her husband as the adoptive parents. The court terminated parental rights at the section 366.26 hearing. Parents and paternal aunt and uncle appealed from the denial of the motion to direct the agency to accept parents' relinquishment of R.T. for adoption by paternal relatives. Paternal aunt and uncle also appealed the order denying their motion to set aside the dispositional order for failure to apply the statutory preference for relative placement.

Reversed and remanded. The juvenile court failed to properly apply the statutory preference for placing a child with a relative. Correct application of the relative placement preference places a qualified relative at the head of the line when the court is determining which placement is in the child's best interest. Paternal aunt and uncle were entitled to preferential consideration and should have been evaluated for placement under the criteria set forth in section 361.3(a)(1) – (8). The court further erred by deeming the relative placement preference inapplicable to post-disposition proceedings, because the relatives invoked the preference before the disposition hearing and the error was timely raised by a section 388 motion. The court should have directed the agency to evaluate the relatives under the statutorily required standards. The juvenile court further erred in failing to determine if the agency abused its discretion in rejecting parents' relinquishment of R.T. for adoption by paternal aunt and uncle. Under Family Code section 8700(a) and (f) parents may relinquish a child for adoption by designated individuals.

The court had the authority to review whether the agency's refusal of parents' voluntary relinquishment constituted an abuse of discretion.

In re Joseph T. (2008) 163 Cal.App.4th 787; Second Appellate District, Division One

After being removed and then placed in a few placements, siblings were successfully placed together in a foster-adoptive home. The agency recommended termination of reunification services and selection of a permanent plan of adoption. A paternal aunt, Deborah, came forward, and the juvenile court ordered the agency to do an assessment for relative placement. The agency did not do a complete assessment, and the judge did not place with the aunt. Father appealed.

Affirmed. The trial court's failure to grant preference to the maternal aunt amounted to harmless error. However, the appellate court found that preferential consideration to relative placement can occur at any time during the family reunification period. The agency's position—limiting the period of relative preference to only when the court is required to change the child's placement—is incorrect. The Legislature's intent in passing section 361.3(d) was to strengthen relative placement, not weaken it. However, the placement preference is not a guarantee, and if a good situation is found for the children in a foster home, the error of the trial court to not apply the preference is harmless.

All County Letter 17-65: "Counties are reminded that relative assessments are not, by statute, limited to a particular timeframe prior to the Termination of Parental Rights (TPR)." http://www.cdss.ca.gov/Portals/9/ACL/2017/17-65.pdf?ver=2017-08-08-130925-883

In re Lauren R. (2007) 148 Cal.App.4th 841; Fourth Appellate District, Division Three

Lauren was placed with a nonrelative foster parent, Amanda C., who wanted to adopt her and was granted de facto parent status. Shortly after Lauren was placed with Amanda C., an aunt who lived out of state requested placement, and an ICPC was initiated. At the time the aunt's home study was approved, Amanda C.'s home study was still pending. The juvenile court ordered that Lauren be removed from Amanda C. and placed with the aunt. Lauren and Amanda C. appealed.

Reversed and remanded. The section 361.3 relative placement preference did not apply in this case because no new placement was necessary and there is no relative preference for adoption. Because the placement order was for adoption, the caretaker preference pursuant to section 366.26(k) was applicable. Section 366.26(k) applies not only after termination of parental rights, but whenever the agency intends to place the child for adoption. The purpose of section 361.3 is to give relatives placement preference when a child is detained and needs a temporary home pending reunification. In contrast, when reunification fails, the purpose of section 366.26 (k) is to give current caregivers preference in being considered for adoption. Remanded for the agency to determine whether Amanda qualifies for the caretaker preference under section 366.26(k); if the agency determines that Amanda does not qualify, the juvenile court is to independently review the agency's determination.

Alicia B. v. Superior Court (2004) 116 Cal.App.4th 856; Fourth appellate District, Division One

Christopher was detained from mother and placed in a non-relative foster home. At detention, the court ordered the agency to notify certain tribes as mother stated she had Indian ancestry. The agency also evaluated the maternal grandmother for placement. At the jurisdiction hearing, the court found notice to the tribes was appropriate and ICWA did not apply. The court did not place Christopher with the maternal grandmother. Mother filed a writ petition.

Affirmed. The juvenile court properly considered the suitability of the maternal grandmother's home and the best interests of the child. The agency evaluated the grandmother in a timely manner and provided the results of its investigation to the court. The juvenile court properly stated its reasons for denying placement with the grandmother and was well within its discretion to make such an order. Preferential consideration under section 361.3 does not create an evidentiary presumption in favor of placement with a relative, but only places the relatives at the head of the line when considering the child's best interests.

In re Sarah S. (1996) 43 Cal.App.4th 274; Second Appellate District, Division One

Sarah was removed from mother and placed with maternal grandparents. A maternal uncle also requested placement, but county agency denied the request because he lived in Arizona. Unbeknownst to the agency and court, grandparents sent the child to live with family friends Ken and Pat. Grandfather falsely told Ken and Pat that no relative wanted to adopt the child. Reunification services were terminated. Court and agency became aware of the child's relationship with Ken and Pat. Contested hearing was held on whether the child should be adopted by Ken and Pat or by uncle. Juvenile court found that child was bonded to Ken and Pat and placed her with them for adoption. Uncle appealed.

Affirmed. Relative placement preference under section 361.3 applies only during reunification period. When services are terminated and proposed plan is adoption, section 366.26(k) applies instead. Section 366.26(k) creates an adoption preference only for relative caregivers. Juvenile court did not abuse its discretion by placing child for adoption with nonrelatives Ken and Pat, since child was bonded to them and they were not to blame for grandfather's deception.