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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re JOSHUA S. et al., Persons Coming Under the Juvenile Court Law.	B170343 (Los Angeles County Super. Ct. No. CK23643)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. PENNY S. Defendant; JOSHUA S. et al., Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County. Sherri Sobel, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed with directions.

Merrill Lee Toole, under appointment by the Court of Appeal, for Appellants.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and William D. Thetford, Senior Deputy County Counsel, for Respondent.

This case returns to us following remand to the juvenile court for reconsideration of its order terminating jurisdiction over two brothers (the children) who, after being adjudicated persons described by Welfare and Institutions Code section 300,[1] were placed by the Department of Children and Family Services (the department) with their indigent maternal grandmother on an Indian Reserve in Canada.[2] In the prior appeal, we found that the juvenile court abused its discretion in terminating jurisdiction because the court failed to consider whether termination was in the children's best interests. (*In re Joshua S.* (2003) 106 Cal.App.4th 1341, 1356.)[3] We remanded for consideration of that issue, including whether grandmother was yet able to provide for the children's needs without financial assistance, and whether financial assistance was available from Canadian or California sources. (*Ibid*.)

On remand, the juvenile court once again terminated jurisdiction, finding it was in the children's best interest to continue living with grandmother and that the court had no authority to order the department to provide financial assistance to the children while they were living in Canada. The children again appeal, making various contentions which, reduced to their essence, are: (1) state funding is available for the children, and (2) the court should not have terminated jurisdiction. We again reverse.[4]

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[1] All future undesignated section references are to the Welfare and Institutions Code.

[2] Grandmother was a member of a Canadian Indian tribe with no affiliation to any American Indian tribe, and the matter therefore did not fall under the Indian Child Welfare Act. (25 U.S.C. §§ 1911 et seq.)

[3] We shall refer to the prior appeal as *Joshua I,* and grant the children's request to take judicial notice of the record in *Joshua I.*

[4] We asked for supplemental briefing on the following three questions: (1) Does grandmother, as the children's legal guardian, have the authority to consent to the termination of the dependency court's jurisdiction on behalf of the children? (2) Do

FACTUAL AND PROCEDURAL BACKGROUND

We briefly summarize the pertinent facts, which are set forth in detail in *Joshua I.* Not long after their respective births in 1996 and 1997, brothers Joshua and Alexander were adjudicated persons described by section 300. Grandmother initially declined to have the children placed with her because she and the Canadian Indian Reserve community did not have the financial resources to care for them—particularly Joshua, who had been diagnosed with special needs.[5] Eventually, grandmother relented, and the Canadian social services department conducted a home study which concluded grandmother would require financial assistance to care for the children. Based on the home study, the children were placed with grandmother and registered with the Ahtakakoop Reserve, thereby becoming dual citizens of Canada and the U.S.

Arriving at a permanent placement plan for the children was difficult. For cultural reasons, grandmother and the Reserve community opposed adoption and preferred that the children remain with grandmother in long-term foster care. Initially, the department recommended adoption as the permanent placement option and encouraged grandmother to consider adoption with assurances that the children would be eligible for financial support, including Adoption Assistance Program (AAP) funding.[6] Subsequently, the department changed its recommendation to long-term foster care to facilitate grandmother's ability to retain the Canadian financial assistance and medical care she had

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grandmother's statements to the California social worker constitute such consent? (3) Do such statements constitute substantial evidence that it is in the children's best interest to terminate jurisdiction? Our negative answer to the first question (see fn. 16, *post*) renders the second question moot; the third question is answered in the course of our discussion of the children's contentions.

[5] Joshua was born with a positive toxicology for barbiturates. Subsequent testing established mild delays in his overall development, a short attention span, and a lack of language skills.

[6] See §§ 16115 et seq.

been receiving for the children. Although it appeared that California funding might be available if the placement were changed to long-term foster care, the juvenile court expressed its intention *not* to agree to long-term foster care under *any* circumstances. The court stated a belief that it was not appropriate to embark on a long-term foster care plan where the children lived in Canada, and where foster care might last for 15 years or so. The juvenile court ordered preparation of guardianship papers after ascertaining that grandmother would accept legal guardianship rather than lose custody of the children altogether. In an October 1999 report prepared for the guardianship hearing, the department recommended grandmother be appointed the children's legal guardian without permanently terminating parental rights and without terminating the court's jurisdiction, explaining: "Los Angeles County will fund the boys at the rate of $560.00 per month, as court jurisdiction will not terminate, and that Canada Department of Social Services will provide medical insurance upon receipt of legal guardianship papers from this court."

On October 22, 1999, grandmother was appointed the children's legal guardian; the juvenile court ordered the department to ensure grandmother received *Youakim*[7] funding and continued the matter for a six-month review hearing. On March 23, 2000, the department filed a "walk-on" report regarding the ongoing funding issues. Although promised funding by the department, grandmother had received none. From someone in the department's "Special Payments Division," the social worker ascertained that the department could send funding out of the country pursuant to a court order, but "this specific case may be a problem as the caregiver is now the legal guardian and that she was no longer considered a relative." The social worker next contacted a department Regional Administrator, who suggested the possibility of Kin-GAP (Kinship

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[7] *Miller v. Youakim* (1979) 440 U.S. 125 (*Youakim*) [relative caregivers are entitled to the same financial aid as non-relative caregivers].

Guardianship Assistance Payment Program) funding.[8] But after discussing the matter with her supervisor, the Regional Administrator informed the social worker that no funding was available because, pursuant to departmental policy No. 45-303, the department "cannot pay out of the country."[9]

Based on department representations that she would be eligible for financial assistance if she adopted the children, grandmother agreed to do so even though it was antithetical to her culture. Subsequently, a Canadian attorney representing grandmother and the Reserve community wrote to the department that grandmother would adopt the children "as soon as all the adoption terms and funding terms were provided to [the attorney] in writing on a legal document written by an attorney of the Superior Court of California." In a subsequent letter, the attorney told the department that adoption was contingent upon the attorney seeing " 'in writing' that AAP funds would be paid to [grandmother] upon adoptive placement."

Apparently the Canadian attorney's demands for written assurances were not well received in Los Angeles, and the attorney's request was never met. Instead, in December 2001, four years after the children had been placed with grandmother with the promise of financial assistance, the department took the position that it would *not* provide any services to the children because they were not residents of the United States, and that it would recommend that jurisdiction be terminated. Accordingly, in the report prepared for a January 7, 2002, hearing, the department stated: "[Department] policy is very clear that [the department] cannot complete an international adoption due to the fact that [the

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8 See §§ 11360 et seq. Specifically, section 11374, subdivision (a) provides: "Each county that formally had court ordered jurisdiction under Section 300 over a child receiving benefits under the Kin-GAP program shall be responsible for paying the child's aid regardless of where the child actually resides, so long as the child resides in California."

9 In pertinent part, section 45-303 of the Manual of Policy and Procedures of the California Department of Social Services provides AFDC-FC warrants "shall not be forwarded or mailed outside the United States . . . ."

department] does not have agreements with adoption agencies in Canada to complete an Adoption home study or provide supervision." At that hearing, the juvenile court terminated jurisdiction.

In *Joshua I*, we found the undisputed evidence then before the juvenile court established that grandmother could not meet the children's needs without financial assistance. (*Joshua I*, *supra*, 106 Cal.App.4th at pp. 1351-1353.) Although the juvenile court rejected long-term foster care for reasons of court convenience and without a proper consideration of the children's best interests, the children did not timely appeal the order appointing grandmother their legal guardian. Accordingly, the only issue on appeal in *Joshua I* was whether the juvenile court abused its discretion in terminating its jurisdiction after the guardianship was established. (*Id*. at p. 1352.) We concluded that it did and remanded to the juvenile court "for consideration of whether continued jurisdiction would be in the children's best interests, including consideration of whether the maternal grandmother can provide for the children's needs without financial assistance, whether financial assistance is available from Canadian sources, and . . . whether it is available from California." (*Id*. at p. 1356.)

We also observed that there appeared to be no statutory bar to a child receiving Aid for Families with Dependent Children-Foster Care (AFDC-FC), where the child had been adjudicated a person described by section 300, had been removed from the home of his or her parents, and had been placed outside of the United States, as long as the child would otherwise by eligible for AFDC-FC payments based on established need. (See §§ 11101, 11105.) To the extent the department had promulgated regulations or policies contrary to the code, we held that those regulations and policies were not enforceable. (*Joshua I*, *supra*, 106 Cal.App.4th at pp. 1357-1358.)

Upon remand, the juvenile court directed the department to submit points and authorities addressing whether there was any statutory authority for the United States to send money to Canada for the children's care. In its ensuing memorandum, the department maintained that California residence is an eligibility criterion for AFDC-FC

payments. As we understand the department's argument, it is that California must comply with Title IV to receive federal funds for AFDC-FC payments;[10] Title IV requires states to monitor children placed in foster care to assure they are receiving proper care; because the department, as the agency responsible for assuring compliance with Title IV, has no authority to compel Canada to comply with its foster care recommendations, it cannot monitor children living in Canada and, therefore, the department cannot fulfill its Title IV obligation.[11] The department distinguished children placed in other *states* who continue to be eligible for AFDC-FC payments because the Interstate Compact on the Placement of Children (ICPC) (Fam. Code, §§ 7900 et seq.) makes compliance with Title IV incumbent upon those states. Moreover, the department argued, the language of sections 11100 [consequences of absence from state for 60 days], 11101 [consequences of absence from the United States for 30 days], 11105 [general state residency requirement for aid eligibility], 11363 [Kin-GAP], and 16115 [AAP] all support the proposition that there is no authority to send funds to children who have become residents of Canada. According to the department, section 11105, subdivision (d), which provides that nothing in that section shall be construed as limiting AFDC-FC payments to children placed out of state, should be read to apply only to ICPC placements.

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10 Title IV of the Social Security Act (42 U.S.C. §§ 601 et seq.) makes federal funds available to states with an approved plan for providing aid and services to needy families with children.

11 The department's argument that it is immaterial that reports from Canadian and tribal social workers were considered in the juvenile court's pre-placement approval of grandmother's home is disingenuous. The department does not explain how it could have relied on Canadian social services agencies to fulfill its statutory obligation to ascertain whether grandmother's home was appropriate for placement in the first instance (see §§ 361.4, subd. (a); 361.2, subd. (e); 309, subd. (d)), but cannot continue to rely on them to ascertain whether the placement continues to be appropriate.

The children countered that continued jurisdiction was in their best interest because it facilitated grandmother's ability to receive financial assistance, particularly in light of Joshua's diagnosed special needs. Regarding the availability of financial assistance, the children maintained that only the department's Manual of Policy and Procedures precludes sending funds to dependent children placed out of the United States, but that provision is invalid inasmuch as it is inconsistent with section 11105, subdivision (d). As to section 11105, subdivision (d), the children disagreed with the ICPC interpretation urged by the department. Although the children argued below that "the best interest of the children lies in returning to long-term foster care under California jurisdiction[,]" they did not file a section 388 petition seeking such a change.

On May 30, 2003, the juvenile court ordered the department and counsel for the children to contact grandmother in Canada and assess (1) what financial assistance she was receiving and from whom; (2) the status of the legal guardianship in Canada; and (3) the current health and well-being of the children.

There is no indication in the record that counsel for the children thereafter contacted the children, grandmother, the Canadian or tribal social services representatives, or the Canadian attorney who had previously represented grandmother in these proceedings.[12] The California social worker made nine unsuccessful attempts to contact the tribal social worker by telephone. From the assistant supervisor of the local Canadian social services agency, the California social worker ascertained that grandmother was receiving $270 per month for each child, plus tax credits from the Canadian government. On June 24 and July 16, 2003, the California social worker made telephone contact with grandmother. As we explain in more detail later in this opinion, in both conversations grandmother indicated that the family no longer wanted financial

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12 Wholly aside from the court's order, the attorney for the children has an independent statutory obligation to investigate matters on behalf of his clients. (§ 317, subd. (e).) We appreciate the practical impediments in this case.

assistance from California and, in fact, wanted nothing more to do with the California dependency system.

Despite grandmother's statements, the children through their counsel maintained at the continued hearing that the juvenile court should retain jurisdiction. They argued that they were eligible for AFDC-FC payments under the state and federal law, the latter of which mandates that, in placing a dependent child, a relative should be given preference over a non-relative, even if the relative lives outside the jurisdiction. (42 U.S.C. § 671, subd. (A)(19).) In reply to the department's argument that the children are not entitled to public assistance because they have taken up residence in Canada, the children argued that the order placing them in Canada satisfies the good cause exception of section 11100 because they are prevented from returning to California, and the record establishes their continuing need under section 11101.[13]

In addition to reiterating its residency requirement argument, the department argued, for the first time, that the juvenile court did not have jurisdiction to consider the matter because the children had failed to exhaust their administrative remedies vis-à-vis their entitlement to AFDC-FC payments.

Following the hearing, the juvenile court once again concluded that funding was not available because the children were residents of Canada and it was in their best interests to terminate jurisdiction. This appeal followed.[14]

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[13] Sections 11100 and 11101 are general residence requirements for persons receiving public assistance in California. According to section 11100, when it is determined that a recipient of public assistance is no longer a resident of this state, such aid shall be terminated unless the recipient is prevented by "illness or other good cause from returning to this state . . . ." (See also § 11100.1.) According to section 11101: "When a recipient of public assistance is absent from the United States for a period in excess of 30 days, his aid shall thereafter be suspended whenever need cannot be determined for the ensuing period of his absence from the United States."

[14] The juvenile court found: "It was my belief, when we terminated this case, that these children were in a safe, loving and stable home. And that funding that was -- that the grandmother was entitled to, under federal or state law, would be provided to her

DISCUSSION

A. Introduction

The children appeal from the juvenile court's order terminating jurisdiction pursuant to section 366.3, subdivision (a), which, with two exceptions, makes termination of dependency court jurisdiction mandatory after a child has been placed with a *relative* for at least 12 months and the relative is appointed the child's *legal guardian*, as is the case here. The two exceptions to mandatory termination of jurisdiction are: (1) if the relative guardian objects, or (2) upon a finding of exceptional circumstances.[15] Here,

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under federal and state law. [¶] For six years, we kept the case open, to try to determine what she was entitled to. [¶] It is my understanding and belief . . . that any money to be collected by or on behalf of the grandmother and these children in the State of California or the United States of America has to be done, at this point, by the Canadian government and the State of California. [¶] . . . [¶] If we do long-term foster care in another state, we can. [¶] In any case, these children are permanent residents of Canada. . . . [¶] [I] do not believe that this court is empowered to grant funding to a relative in another country with children in a legal guardianship who are permanent residents of that country." Counsel for the children noted that the only reason the children were in legal guardianship, rather than long-term foster care, was because grandmother was promised that taking legal guardianship was the only way she could obtain financial assistance. The court clarified: "[A] person in another *state* with long-term foster care could get funding. [¶] I am not aware that children in another *country* can get funding if they are in long-term foster care." (Italics added.) It concluded: "In my opinion, the department has checked on the well-being of the children. They're in a safe and stable placement. [¶] . . . [¶] . . . I do not believe this court has the authority to provide funds for the grandmother in Canada, under any theory of law." Regarding the administrative remedy argument, the juvenile court observed: "[I]f, in fact, she does have an administrative remedy and pursues that administrative remedy -- I'm not positive what the law is -- but I do think I would entertain a motion for joinder, if she doesn't get satisfaction down the road somewhere. [¶] But I think that it is California and Canada who need to be dealing with this. I do not believe this court has the authority to provide funds for the grandmother in Canada, under any theory of law. [¶] . . . [¶] I find for the department here, and jurisdiction is hereby terminated, again."

15 Section 366.3, subdivision (a) provides in part: "If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except if the relative guardian objects, or

grandmother does not object to termination; therefore, the mandatory ground for retaining jurisdiction is not implicated.[16] But the children do object, and their objection puts into issue the second, discretionary ground for retaining jurisdiction: whether exceptional circumstances exist.

Implicit in the juvenile court's order terminating jurisdiction in the face of the children's objection is a finding that there are no exceptional circumstances. The juvenile court articulated two reasons for its conclusion: (1) the children were not eligible for public assistance from California "under any theory of law" because they had become residents of Canada and (2) they were in a safe and stable placement. We conclude that, on the current state of the record, the juvenile court abused its discretion by terminating jurisdiction for the following reasons: First, the juvenile court erred in its conclusion that

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upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4." Section 366.4 provides: "Any minor for whom a guardianship has been established . . . pursuant to Section 366.26 is within the jurisdiction of the juvenile court. For those minors, [provisions of the Probate Code] relating to guardianship, shall not apply."

16 This is established by grandmother's statements to the California social worker who contacted grandmother by telephone on June 24 and July 16, 2003. According to documents filed with the court, on June 24, 2003, when asked by the social worker whether she wanted California social workers to continue monitoring the children, grandmother replied: "My family is doing well, we have everything we need, and we want to be left alone. . . . I don't want anyone calling and asking questions about the children, including social workers, or the courts. . . . I don't want anything from California. We want to live our lives in peace." On July 16, 2003, grandmother reiterated: "We just want to be left alone and live in peace."

The grandmother's comments do not constitute legal "consent" to the juvenile court's termination of jurisdiction on behalf of the children, for the children's counsel represent the children's interests. (§ 317; Cal. Rules of Court, rule 17.16(c); *In re Melissa S.* (1986) 179 Cal.App.3d 1046.) Thus, the answer to our first supplemental questions is in the negative and the second question is moot. (See fn. 4, *ante*.) Although the grandmother does not legally speak for the child in the dependency proceeding, clearly the grandmother on her own behalf does not object to termination.

no circumstances would permit the children to obtain funding from California. Second, the evidence of the children's need was substantial. Third, the grandmother's telephonic statements to the social worker that the family essentially was fine and wanted to be left alone did not overcome the contrary evidence of funding availability and financial need such that the court could conclude there were no "exceptional circumstances."

In the ensuing sections we hold: (1) California funding is available if the children were to be in long term foster care; (2) because the juvenile court was unaware of its authority to order funding in those circumstances, on this record it abused its discretion in terminating jurisdiction; (3) the children were not required to exhaust administrative remedies as a prerequisite to seeking funding; and (4) the juvenile court should provide the children with an opportunity to file a section 388 petition if they choose to convert the legal guardianship to long-term foster care in order to seek funding.[17]

B. Placement with Grandmother in Canada Did Not Render the Children Ineligible for Public Assistance from California

1. The Department Is Not Estopped to Deny Funding

The children contend the department should be estopped from asserting their eligibility for unavailability of AFDC-FC payments. Relying on Evidence Code section 623, they argue that the department intentionally and deliberately misled grandmother into believing that she would receive financial assistance if she accepted placement of the children. While there can be no doubt that grandmother relied on the statements of the department social workers in the first four years of these dependency proceedings that funding would be available, there is no evidence the social workers "deliberately misrepresented or concealed material facts" (*City of Long Beach v. Mansell*

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[17] We asked for supplemental briefing on whether the juvenile court should maintain jurisdiction for this purpose. The children argue that it should. The department disagrees, arguing that, since "it has been established that the legal guardian is not in need of AFDC-FC funds to properly care for the children," there are no exceptional circumstances. As we explain, the record is to the contrary.

(1970) 3 Cal.3d 462, 488), a prerequisite to finding estoppel against a public entity. (*Ibid*.) Rather, there appears to have been a misunderstanding on the part of various social workers as to what financial assistance was available to a dependent child placed outside of California. As we explain below, determination of this question requires careful analysis of complex federal and state statutes. Given the complexity of the law, and the absence of any direct evidence of bad faith, application of estoppel principles would be inappropriate.[18]

2. Public Assistance Is Available

In determining whether the children are legally eligible for funding, we begin with an overview of the federal and state statutory schemes pursuant to which public assistance is authorized for dependent children in California. Subchapter IV of Title 42 of the United States Code concerns "Grants to States for Aid and Services to Needy Families with Children and for Child Welfare Services." Part A of subchapter IV concerns block grants to states for temporary assistance for needy families. The purpose of Part A is, among other things, to increase the flexibility of states in operating a program designed to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives[.]" (42 U.S.C. § 601, subd. (a)(1).) Part E of subchapter IV enables states to provide foster care for children who otherwise would have been eligible for assistance under Part A. (42 U.S.C. § 670.) Under the federal scheme, to be eligible for AFDC-FC payments, a child must have been removed from the home of a relative pursuant to a judicial determination that remaining in the

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18 The narrow circumstances under which estoppel may be imposed against public entities underscores the need for caution so as to avoid making promises of financial aid that the department may have difficulty keeping. The record shows that from the outset financial assistance was an important consideration for both grandmother and the department in deciding whether the initial placement with maternal grandmother was appropriate and then whether the permanent plan was to be foster care, guardianship, or adoption.

home would be contrary to the child's welfare, the child's placement and care must have become the responsibility of the state or public agency responsible for administering the state's compliance with Title 42, and the child must be placed in foster care. (42 U.S.C. § 672, subd. (a).) In *Youakim, supra*, 440 U.S. 125, the Supreme Court held that relative caregivers were entitled to the same AFDC-FC payments as were non-relative caregivers.

To be eligible for federal payments, a state must have in place a plan providing for foster care maintenance payments in accordance with section 672.[19] (42 U.S.C. § 671.) California's plan is codified at sections 11400 et seq. Consistent with the federal scheme, California law mandates that, to be eligible for AFDC-FC payments, a dependent child must be placed in any one of seven placements. (§ 11402.) The qualifying placement relevant here is "[t]he *approved* home of a relative, provided the child is *otherwise eligible for federal financial participation* in the AFDC-FC payment." (§ 11402, subd. (a), italics added.)[20] Placement in accordance with section 11402, subdivision (a) satisfies both the section 671, subdivision (A)(19) preference for relative caregivers and the section 672, subdivision (b) limitation on foster care maintenance payments to only those children placed in an *approved* foster family home (see § 672, subd. (c)). As an uncodified portion of California law states, "California's clear mandate for an exhaustive search for available relatives and primary consideration of these relatives for placement is in accord with federal Title IV-E requirements that the 'State shall consider giving

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19 "The term 'foster care maintenance payments' means payments to cover the cost of (and the cost of providing) food, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation." (42 U.S.C. § 675, subd. (4)(A).)

20 To be "eligible for federal financial participation," there must be a judicial determination that continuance in the home would be contrary to the child's welfare, the child has been deprived of parental support, the child has been removed from the home of a relative, and the "requirements of Sections 671 and 672 of Title 42 of the United States Code, as amended, have been met." (§ 11401, subd. (f)(4); see also § 11402.1 ["Eligible for federal financial participation" means that the payment is consistent with a state plan under section 671].)

preference to an adult relative over a nonrelated caregiver when determining placement for a child.' [¶] The intent of the Legislature is to clarify that California's relative caregiver approval process employs the same standards used to license foster care homes in accordance with federal Adoption and Safe Families Act of 1997, (P.L. 105-89), and, therefore, California's compliance entitles it to continuous Title IV-E foster care maintenance and administration payments." (See Stats. 2001, ch. 653 (A.B. 1695), § 1.)[21]

Although aid is generally available only to California residents (§ 11105, subd. (a)), section 11105, subdivision (d) provides the following exception for AFDC-FC payments: "Nothing in this section shall be construed as limiting Aid to Families with Dependent Children-Foster Care payments to children placed out of state by California children's placement agencies."

Here, the children satisfy all the criteria for AFDC-FC eligibility: they were removed from the home of a relative pursuant to judicial determination that continuance in the home would have been contrary to their welfare (§ 11401, subds. (b), (f)(1) and (3)); they have been deprived of parental support (§ 11401, subd. (f)(2)); and their placement with grandmother is in accordance with sections 671 and 672 (§ 11401, subd. (f)(4)). The placement with grandmother meets the requirements of federal law because it was a placement into the "approved home of a relative." (See §§ 361.2, subd. (e)(1), and 309, subd. (d).)

That grandmother lives in Canada does not render the children ineligible for AFDC-FC payments. Section 11105, subdivision (d) expressly provides as much. Contrary to the department's assertions, nothing indicates that section 11105, subdivision (d) should be read to apply only to placements made in other American states

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21 Under California's relative caregiver approval process, a social worker given care and custody of a child removed from the home pursuant to section 361 makes an in-home inspection and determines financial eligibility using the same standards as those applicable to foster family homes. (See §§ 309, 361, 361.2, subd. (e)(1).)

pursuant to the ICPC; rather, section 11105, subdivision (d) refers to an "out of state" placement, which placement in Canada surely is. Nothing in the statute limits the exception to domestic placements, and, although no legislative history informs us, we find the codification of section 11105, subdivision (d) in the same "Article" as section 11101 telling. The latter section specifically addresses "absence from the United States." The Legislature was manifestly aware that aid recipients might reside outside the United States, and yet made no effort in section 11105, subdivision (d) to restrict AFDC-FC payments to children living in the United States. There is sound reason for such a legislative choice. If the juvenile court concludes that the best interests of a United States citizen child over whom it has jurisdiction is to place that child in foster care out of the United States, the available financial benefits to the child should not stop at the border. A child's needs do not magically diminish when the child goes to a foreign county.

We also are not persuaded by the department's argument that the placement in Canada renders the department incapable of fulfilling its obligation to continue reviewing the appropriateness of the placement. The department's initial compliance with sections 361.2 and 309 was accomplished with the assistance of Canadian social services. If the department was able to rely on Canadian social services to assist in initially "approving" grandmother's home, there would seem to be nothing to preclude the department from continuing to rely on Canadian social services for assistance in monitoring the placement.

C. The Juvenile Court Abused Its Discretion When It Terminated Jurisdiction

As we observed in the first appeal, whether exceptional circumstances exist to warrant continued jurisdiction is left to the sound discretion of the trial court. (See *Joshua I*, *supra*, 106 Cal.App.4th at p. 1353.) "To exercise the power of judicial discretion all the material facts in evidence must be known and considered, together also with the legal principles essential to an informed, intelligent and just decision. [Fn. omitted.] [Citations.]" (*People* v. *Andrade* (2000) 79 Cal.App.4th 651, 654, fn. 1,

internal quotation marks omitted.) Abuse of discretion is established if the determination is not supported by substantial evidence. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 796, superseded on other grounds by statute.)

Here, the juvenile court's incorrect view that the children were ineligible for any public assistance from California because they had been placed in Canada permeated much of the court's decision-making process in this case and was a stated basis for terminating jurisdiction.

Because the juvenile court was under a misapprehension about applicable law, it was unable to factor into its decision the possibility that funding might be available if the court retained jurisdiction. We recognize that the perceived unavailability of funding was not the only basis for the court's decision to terminate jurisdiction, but on this record, we cannot say the court would not have exercised its discretion differently if the true state of the law had been taken into account.

Stated slightly differently, if the juvenile court had understood that AFDC-FC would be available to the children if placed in foster care with grandmother, it is likely the juvenile court would have selected long-term foster care as the permanent placement plan. This is particularly so since the evidence of the children's well-being—what the court called living in a "safe and stable placement"—was far from convincing. The showing made by the department was based almost exclusively on telephone conversations with the grandmother. She gave only general assurances that the children were well. No home visit was conducted; nor did the record reveal the social worker spoke to any representative from Canadian or Reserve authorities who had first hand knowledge of the children's living conditions; nor was any documentary proof in the form of school or medical records considered.

In this context, we observe that the children's attorney apparently had no contact with his clients following remand. Although direct communication with minor children living thousands of miles away is difficult, counsel for dependent children have the legal responsibility to be in contact with their clients. (§ 317; Super. Ct. L.A. County, Court Rules, rule 17.16(c); see also *In re David C.* (1984) 152 Cal.App.3d 1189, 1207-1208.)

Here, the absence of any direct information from the duly appointed children's representative made the juvenile court's reliance on the telephonic statements of the grandmother even less reasonable.[22] Another source of information was the Canadian lawyer who had represented both the grandmother and the Indian Reserve, but he apparently was not contacted. What the court did know was that the family members were still receiving $270 aid from the Canadian government so the family was not entirely self sufficient.

Thus, the record that confronted the juvenile court, in light of the law as we have explained it, was as follows: The grandmother stated the children were fine, no information was presented directly from the children or the Indian Reserve, the family was receiving $270 monthly aid, and additional funding was available from California if the placement were to be converted from guardianship to long term foster care. Under these circumstances, it was not an appropriate exercise of discretion to terminate jurisdiction. At a minimum, the juvenile court should have inquired from the children's counsel if he intended to file a section 388 petition in order to possibly avail the children of the additional funding. Counsel concededly did not make such an application but given the trial court's view of the law, a section 388 petition would have been futile.

We vacate the juvenile court's order terminating jurisdiction. On remand, the children should be permitted a reasonable opportunity to file a section 388 petition. If the children do not file such a petition, the juvenile court may reinstate the order terminating jurisdiction. If the children file a section 388 petition, we express no opinion as to how the juvenile court should rule, other than to observe that the children's best interests are paramount to the decision. (§ 388; *In re Angel B.* (2002) 97 Cal.App.4th 454, 461, 463.) Although we have held that funding is not unavailable simply because the children live in

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[22] The children did not object to the admissibility of the statements by the grandmother so it was proper for the court to consider them.

Canada, the juvenile court may be called upon to consider any number of factors in deciding whether to grant section 388 relief.[23]

D. The Exhaustion of Administrative Remedies Rule Is Not Applicable Here

The children contend the juvenile court has the authority to order services and funding even though they have not pursued the denial of benefits through the administrative process. Relying on section 362, subdivision (a), they argue that the juvenile court has the power to make any orders necessary to ensure the children's well being. The children argue further that they were not required to pursue an administrative remedy because it was clear that to do so would have been futile.

In pertinent part, section 362 provides: "(a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court." Here, the children have been adjudged persons described by section 300. Accordingly, the juvenile court has the authority to make any and all reasonable orders for their maintenance and support. Inasmuch as we have determined that the children would be eligible for AFDC-FC payments if placed in long-term foster care with grandmother in Canada, the juvenile has the authority to order the department to make those payments. (See, e.g., *Land v. Anderson* (1997) 55 Cal.App.4th 69, 84 (*Land*), overruled by statute on another point.)

Land involved three consolidated administrative writ petitions by dependent children denied AFDC-FC payments by the department. In each case, the children sought review of the initial decision through one or more levels of administrative review.

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23 Because the best interests of the child are of paramount concern at a section 388 hearing (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317), the inconvenience to the court in scheduling periodic hearings legally required if the placement is converted to foster care is not in itself a sufficient basis to deny the petition.

Here, the department contends that the children are, likewise, obliged to exhaust their administrative remedies for the denial of AFDC-FC payments before they may have recourse to the courts. We disagree.

"While we recognize the rule of exhaustion of administrative remedies remains a 'fundamental rule of procedure' [citation] we are also aware that courts have repeatedly recognized the rule is not inflexible dogma. [Citations.] Exceptions to the rule include situations when the agency is incapable of granting an adequate remedy [citation] or when resort to the administrative process would be futile because it is clear what the agency's decision would be [citations]. Before a court can determine whether an exception is applicable the court must analyze and determine whether the benefits served by the administrative hearing outweigh denying a litigant meaningful judicial review." (*Doster v. County of San Diego* (1988) 203 Cal.App.3d 257, 260-261 (*Doster*).)

Here, the department's Manual of Policy and Procedures section 45-303 states that foster care payments may not be made outside of the country.[24] Thus, it seems clear that the agency—in this case the department—relying on its own Manual of Policy and Procedure, would decide that foster care payments could not be made to the children because they have been placed with grandmother in Canada. Since the result of the administrative process is obvious, there would be no benefit to requiring the administrative proceedings to take their course. (Cf. *Doster*, *supra*, 203 Cal.App.3d at pp. 261-262.)

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[24] Section 11209 authorizes the department to make rules and regulations for the administration of AFDC and provides that "[s]uch rules and regulations shall be binding upon the institutions, county welfare departments and any public or private agency that is responsible for the placement and care of a child receiving AFDC-FC." But, as we noted in *Joshua I*, *supra*, 106 Cal.App.4th at page 1358: "To the extent the department promulgates regulations or policies contrary to the code, those regulations and policies are not enforceable."

DISPOSITION

The order terminating jurisdiction is reversed. The children shall have 120 days from the date of remittitur to file a section 388 petition to modify the permanent placement order from legal guardianship to long-term foster care with grandmother for the purpose of making the children eligible for AFDC-FC payments. During those 120 days, counsel for the children is directed to make all reasonable efforts to interview the children to ascertain their wishes and to obtain any other evidence that might bear on the petition. If counsel for the children notifies the juvenile court that it is not in the children's best interests to file such a petition, or if no such petition is filed within 120 days of the remittitur, the trial court is authorized to terminate jurisdiction.

CERTIFIED FOR PUBLICATION

RUBIN, J.

We concur:

COOPER, P.J.

BOLAND, J.