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SUPREME COURT NO._____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re K. C.,	)	COURT OF APPEAL
	)	NO. F058395
A Person Coming Under	)	
The Juvenile Court Law.	)	JUVENILE
	)	NO. 08JD0075
KINGS COUNTY DEPARTMENT OF HUMAN SERVICES,	)	
Plaintiff and Respondent,	)	
	)	
v.	)	
	)	
JOHN C.,	)	
Objector and Appellant.	)	
	)	

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
FOR THE COUNTY OF KINGS

HONORABLE GEORGE L. ORNDOFF, JUDGE

PETITION FOR REVIEW AFTER THE PUBLISHED OPINION OF THE COURT OF APPEAL, FIFTH APPELLATE DISTRICT

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By appointment of the Court of Appeal under the Central California Appellate Program. Independent case system
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TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

John C., father and appellant, respectfully petitions for review

following the April 26, 2010, published opinion of the Court of Appeal, Fifth Appellate District, holding that John lacks standing to challenge the denial of his parents' Welfare and Institutions Code section 388 modification petition for placement of K. into their home.[1] A copy of the opinion is attached hereto as Appendix "A".

Pursuant to rule 8.500(b)(1) of the California Rules of Court, review is urged to secure uniformity of decision[2]

ISSUE PRESENTED

What is the proper scope of the showing that a parent's interests have been injuriously affected in order for a parent to have appellate standing to challenge the denial of relative placement where the permanency hearing is pending? The Fifth Appellate District, in this opinion, holds that the parent must show that his interests *are* injuriously affected by the court's decision, not that the parent's interest theoretically might be affected. (Slip Opn. p. 10.) While the published decisions rendered in the Fourth Appellate District, Division One, in *In re H.G.* (2006) 146 Cal.App.4th 1, 10 (*H.G.*) and *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054 (*Esperanza C.*) recognized

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1 Hereinafter all statutory references are to the California Welfare and Institutions Code unless otherwise stated.

2 Hereinafter all rule references are to the California Rules of Court.

that placement of a child with a relative has the potential to alter the juvenile court's determination of the child's best interests and the appropriate permanency plan for that child, and may affect a parent's interest in his or her legal status with respect to the child, therefore the parent has standing to challenge the order denying relative placement.

NECESSITY FOR REVIEW

John urges review under the rule 8.500(b)(1) criteria to secure uniformity of decision regarding the proper scope of the showing that a parent's interests have been injuriously affected in order for a parent to have appellate standing to challenge the denial of relative placement where the permanency hearing is pending. The instant opinion, sought to be reviewed here, conflicts with the published decisions rendered in the Fourth Appellate District, Division One, in *In re H.G.* (2006) 146 Cal.App.4th 1, 9-10 (*H.G.*) and *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054 (*Esperanza C.*).

As this issue has been addressed in a conflicting manner in several published opinions, it requires this court's guidance to ensure the correct and uniform construction of the statutory framework regarding standing of parents to challenge the denial of relative placements.

STATEMENT OF THE CASE AND FACTS

John C. is the father of seven boys however; only K. is the subject of

this appeal.

K., was removed from his mother's custody at month of age, by the Kings County Human Services Agency [Agency] because he was present in the mother's car during when the oldest son jumped from the car and committed suicide. (1 C.T. 12-14.) At the time, the older boys [except the deceased child] were dependents of the Tulare County juvenile court and placed with the paternal grandparents, Mary and Leo C. , with a permanent plan of adoption. (2 C.T. 388, 414.) Both the Tulare County Adoption Agency social worker assigned to K.'s five siblings, as well as the Tulare County adoptions social worker assigned to conduct the home study for the paternal grandparents, testified the grandparents were appropriate to adopt infant K., and fully capable of meeting his needs- -they would place K. in the grandparents home if he were under the control of the Tulare County "without reservation." (7 R.T. 808-810; 815, 824-837.)

The grandmother and John C. both appeared at K.'s detention hearing and requested that K. be placed in the paternal grandparents' home with K.'s full siblings. (1 R.T. 8.) At the disposition, the Agency had not completed the home study for the relative placement in the neighboring county, but reunification services were denied for the parents for their failure to reunify with the older children. (2 C.T. 473; 2 R.T. 107-108, 112.) The grandparents

again requested custody. (2 R.T. 107-108.)

Pending the selection and implementation hearing, the Agency assessed the grandparents' home as meeting the standards for relative placement, but nonetheless declined to place K. with his grandparents; the grandparents filed a grievance notice within days of learning about the denial. (3 R.T. 304-305; 8 R.T. 1057-1058.) However, days after receiving the grandparent's grievance notice, the Agency placed K. into another foster home which planned to adopt K., without notice to John or his parents. (2 C.T. 548-714.)

On April 16, 2009, John's parents filed a section 388 modification petition requesting the court to modify its order placing K. into licensed foster care and order that K. be placed in the grandparents home, so they could provide a permanent home for K. with his five siblings. (3 C.T. 729.) John joined the petition. (5 R.T. 511; 8 R.T. 1098.)

After a contested hearing, the court denied the placement requested by the section 388 petition, found by clear and convincing evidence that K. was adoptable, selected adoption as the permanent plan and terminated John's parental rights. (8 R.T. 1130-1131.)

John timely appealed on August 27, 2009. (4 C.T. 1045-1046S.)

REVIEW IS NEEDED TO SECURE UNIFORMITY OF DECISION REGARDING THE SCOPE OF THE SHOWING REQUIRED FOR A PARENT TO ASSERT HIS INTEREST IN CHALLENGING THE DENIAL OF RELATIVE PLACEMENT WHERE THE PERMANENCY PLANNING HEARING IS PENDING

John petitions for review of the Court of Appeal's published decision that holds: "A parent does not have appellate standing to challenge an order denying a relative placement request once a permanency planning hearing is pending unless the parent can show his or her interest in the child's companionship, custody, management and care is, rather than may be, "injuriously affected" by the court's decision." (Slip Opn. p. 7.)

The Court of Appeal opinion recognized that its sister court had "articulated a broader view of a parent's interest" in the denial of relative placement. (Slip Opn. p. 5.) While agreeing that "a parent retains a fundamental interest in the child's companionship, custody, management and care until parental rights are terminated," the Fifth Appellate District Court of Appeal respectfully disagreed with the holding that a parent is aggrieved by a decision that has the "potential" to or "may affect" the parent's interest. (Slip Opn. pp. 6, 9-10.)

John urges this court to grant review in this matter to secure uniformity of decision among the California Courts of Appeal- - the current state of the

law, provides a parent in the dependency system in Southern California a right to be heard regarding decisions which significantly impact his "fundamental interest in the child's companionship, custody, management and care" until parental rights are terminated. But a similarly situated parent in the dependency system governed by the Fifth Appellate District is denied that important right to be heard on the merits.

John asserts that the best interests of the child are always enhanced by a full and fair hearing on the merits when the juvenile court is grappling with decisions which will affect the child for the rest of its life, and similarly, by a full and fair review of the merits on appeal. In this case, young K. has been denied the right to have a relationship with his full, biological brothers and his loving extended family- - due to what John contends, was an arbitrary and wrongfully rendered decision of the juvenile court. Yet the decision will evade meaningful review, because the grandparents untimely filed their Notice of Appeal, and John has been denied standing to be heard on the merits. (Slip Opn. pp. 4, 10.)

"It is a well established policy that, since the right of appeal is remedial in character, our law favors hearings on the merits when such can be accomplished without doing violence to applicable rules. Accordingly in doubtful cases the right to appeal should be granted." (*Lee v. Brown* (1976)

18 Cal.3d 110, 113.) And further, the Code of Civil Procedure, "section 902 is a remedial statute, which should be 'liberally construed,' with 'any doubts resolved in favor of the right to appeal.'" *Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 540.)

John argues that the issue of his standing to challenge the denial of his parents' placement request should be liberally construed and doubts resolved in favor of his right to appeal. (*In re H.G.* (2006) 146 Cal.App.4th 1, 9; *In re Valerie A.* (2007) 152 Cal. App. 4th 987, 999; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053.) This is consistent with the general rule is that a parent who is an aggrieved party may appeal a judgment in a juvenile dependency matter, and to be aggrieved, "a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision" which is more than a "nominal interest or remote consequence of the ruling." (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.)

To recognize John's standing to challenge the denial of his parents' request to have K. placed in their home, is in keeping with "California's strong public policy favoring the facilitation of family reunification" through placement relative caregivers that "presumably has a broader interest in family unity, is more likely than a stranger to be supportive of the parent-child

relationship." (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 797-798.)

Thus, the denial of the paternal grandparents' section 388 modification petition requesting custody directly impacts John's future relationship with his son. The Court of Appeal opinion focused solely on John's legal relationship with his son in determining that John failed to show his interests were "injuriously affected" by the juvenile court's ruling. (Slip Opn. p. 10.) But John argues that while his legal parental rights would be terminated by K.'s adoption by the paternal grandparents, John would still have the legal relationship of "uncle" with his son.

And practically, if not legally, K.'s placement with John's parents under the permanent plan of adoption, gives John has the *opportunity* to visit and have a relationship with his son, contingent on John's appropriate behavior and lifestyle. (7 R.T. 875,885, 868.) Conversely, if K. is adopted by the current foster placement, there is no potential for a future relationship with John, his parents or K's full-blooded brothers. (3 C.T. 755-756.) John disagrees with the Court of Appeal opinion to the contrary and asserts he has an "immediate and substantial interest" which has been adversely affected by the juvenile court's denial of placement with the paternal family. (Slip Opn. p. 10.)

Conclusion

Review is necessary, under the rule 8.500(b)(1) criteria to secure uniformity of decision where the Fifth Appellate District has improperly restricted the scope of the parent's standing to challenge the denial of relative placement and this decision conflicts with other published Court of Appeal opinions in the State of California. Thus, review is necessary in this matter to ensure a correct and uniform construction of the application of the procedural framework and to settle this important question of law. (*People v. Davis* (1905) 147 Cal. 346, 358; *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809.) Review is made more urgent based upon the published status of this opinion.

Respectfully submitted:

Date: June 4, 2010

MONICA VOGELMANN
Attorney for Appellant

Word Count Certification

Pursuant to rule 8.360(b)(1) of the California Rules of Court, I, Monica Vogelmann, appointed counsel for appellant, hereby certify that I prepared the foregoing Appellant's Petition for Review on behalf of my client, and that the word count for this brief is [2,223 ✓] excluding tables. This brief therefore complies with the rule which limits a computer-generated brief to 25,500 words. I certify that I prepared this document in Word Perfect X4 word processing program, and that this is the word count the Word Perfect X4 word processing program generated for this document.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 4, 2010

_____

Monica Vogelmann

Filed 4/26/10

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re K.C., a Person Coming Under the Juvenile Court Law.	
KINGS COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. J.C., Defendant and Appellant.	F058395 (Super. Ct. No. 08JD0075) **OPINION**

THE COURT*

APPEAL from orders of the Superior Court of Kings County. George Orndoff, Judge.

Monica Vogelmann, under appointment by the Court of Appeal, for Defendant and Appellant.

Peter Moock, County Counsel, and Johannah Hartley, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Hill, J., and Kane, J.

J.C. (father) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26) to his son, K.[1] At the same hearing that resulted in the termination, the trial court also denied a petition for relative placement (§ 388) brought by the child's paternal grandparents (grandparents). Father's sole contention is that the court erred in denying the relative placement request. On review, we affirm. We hold father does not have appellate standing to contest the denial order.

PROCEDURAL AND FACTUAL HISTORY

In December 2008, the Kings County Superior Court adjudged infant K. a juvenile dependent child and removed him from parental custody. There was a substantial risk that the infant would be abused or neglected. His mother's chronic abuse of methamphetamine and alcohol rendered her unable to provide K. with regular care and supervision. (§ 300, subd. (b).) In addition, she previously neglected and failed to reunify with K.'s siblings who were juvenile dependents of the Tulare County Superior Court. (§ 300, subd. (j).) At the same December 2008 hearing, the court denied both parents reunification services (§ 361.5, subd. (b)(10), (11) & (13)) and set an April 2009 section 366.26 hearing to select and implement a permanent plan for K.

In the meantime, the grandparents requested placement of K. and were going through the process of a placement assessment. They also expressed a willingness to adopt K. Respondent Kings County Human Services Agency (agency) meanwhile placed K. in a foster home.

The agency completed its placement assessment of the grandparents in mid-January 2009. It determined the grandparents' home met the licensing requirements under section 361.4. However, for numerous reasons, the agency determined K.'s placement with the grandparents was not in his best interest, and so denied the placement

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

request. When the grandparents submitted a grievance, the agency's program manager reconsidered the decision not to place. Upon reconsideration, the program manager decided not to overturn the previous decision and so informed the grandparents in writing in March 2009.

An adoption specialist with the California Department of Social Services (CDSS) meanwhile filed a "366.26 WIC Report" in which it recommended the court find K. adoptable and order termination of parental rights. Because it is undisputed that K. is likely to be adopted, we need not summarize the supporting evidence here.

According to the report's history of family contacts, there had been no visits between K. and his birth parents since his detention in November 2008 when K. was six weeks old. The court, however, had authorized supervised visits between K. and father at the detention hearing. Due to the lack of visitation and contact, it was difficult to state that a significant bond and attachment had formed. It did not appear termination would be detrimental to K.

In April 2009, the grandparents petitioned, pursuant to section 388, to have K. placed in their home. The court ordered a hearing on the grandparents' petition. The hearing eventually occurred, along with the permanency planning hearing, in August 2009. Following a two-day evidentiary hearing on the grandparents' petition, father's counsel joined in their argument for placement.

The court thereafter denied the grandparents' petition. It found, having considered factors outlined in section 361.3 regarding relative placement, that placing K. with the grandparents would not be appropriate.

The parties then proceeded with the section 366.26 hearing. The agency submitted the matter on the 366.26 WIC Report previously filed by CDSS. There was also testimony that father had still not visited with K. In fact, since K.'s birth, father saw him only once. Father's counsel acknowledged there was no exception to adoption that

applied in this case. Nevertheless, father did not agree K. should be adopted. He wanted the opportunity to have K. in his care and to have K. placed with the grandparents.

Having found K. was likely to be adopted, the court terminated parental rights. Both father and the grandparents filed notices of appeal.[2]

DISCUSSION

As a general rule, a parent may appeal a judgment or appealable order in a juvenile dependency matter. (§ 395, subd. (a)(1).) As in any appeal, however, the parent must establish he or she is an aggrieved party to obtain an on-the-merits review of a particular ruling. (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734 (*Carissa G.*).) To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision. (*Ibid.*, citing *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) An appellant's interest must not be nominal or a remote consequence of the court's decision. (*Ibid.*)

Father contends he has standing to challenge the trial court's denial of the grandparents' placement request because: one, he still had a fundamental interest in his son's companionship, custody, management and care at the time of the court's ruling even though family reunification was no longer a goal of the proceedings; and two, relative placement had the potential to alter the trial court's determination of the appropriate permanent plan for the child and thus might affect his (father's) interest. He relies on *In re H.G.* (2006) 146 Cal.App.4th 1, 9-10 (*H.G.*) and *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054 (*Esperanza C.*) for these propositions. In what appears to be an alternative argument, father argues the court's denial directly impacted his future relationship with K. because had the court granted the grandparents' petition, father would have the opportunity to visit and have a relationship with K.

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2 The grandparents' notice was untimely and this court subsequently dismissed their appeal.

As discussed below, we concur with father and the cases he cites that he still had a fundamental interest in his son's companionship, custody, management and care at the time of the court's ruling. We disagree, nevertheless, that a parent need only show that the trial court's decision has a *potential* to or *may affect* his fundamental interest in order to establish appellate standing. We also are not persuaded by father's alternative argument that the court's denial directly impacted his future relationship with his son.

A Parent's Interest

Over the years, some appellate courts have assumed a parent's interest for standing purposes was to reunify with his or her dependent child. (See *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1835; *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.) In these cases, appellate courts rejected parents' efforts to challenge orders denying relatives de facto parent status when reunification was no longer the goal of the dependency proceedings. The courts ruled the denial orders did not prejudice the parents' right or interest to reunify. (*Ibid.*)

Following this same assumption, the appellate court in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035 (*Cesar V.*), held a parent lacked appellate standing to challenge a court's ruling on a relative placement issue. Like the earlier cases cited above, the proceedings in *Cesar V.* had reached the stage where reunification was no longer the goal. The *Cesar V.* court explained it could not see how the denial of relative placement affected the parent's interest in reunification with the children. (*Ibid.*)

More recently, the Fourth District, Division One in *H.G., supra,* 146 Cal.App.4th at page 9 and *Esperenza C., supra,* 165 Cal.App.4th at page 1054, has articulated a broader view of a parent's interest. Even when reunification is no longer a goal of the dependency proceedings, these cases observe, a parent retains a fundamental interest in the child's companionship, custody, management and care until parental rights are terminated. (*Ibid.*) This approach is based on the principle articulated in *Stanley v.*

Illinois (1972) 405 U.S. 645, 651 that a parent's interest in the companionship, care, custody and management of his or her children is a fundamental civil right. (See also *In re B.G.* (1974) 11 Cal.3d 679, 688.)

The *H.G.* court added that the dependency statutory scheme reflects this principle. (*H.G., supra,* 146 Cal.App.4th at pp. 9-10.) It specifically cited to sections 361.3, subdivision (a)(2), 388 and 366.21, subdivision (h). (*H.G., supra,* 146 Cal.App.4th at pp. 9-10.) Section 361.3, subdivision (a)(2) obligates the juvenile court to consider a parent's wishes, among other factors, when considering relative placement. Section 388 authorizes modification of a prior dependency order upon a showing of changed circumstances and that a different order would promote the child's best interest. *H.G.* noted section 388 would allow return to parental custody upon a showing of changed circumstances after reunification services are terminated. (*H.G., supra,* 146 Cal.App.4th at p. 10.) Section 366.21, subdivision (h) authorizes parent/child visitation after termination of reunification services.

We agree with this reasoned approach in characterizing a parent's interest, that is, a parent retains a fundamental interest in the child's companionship, custody, management and care until parental rights are terminated. We would add to the *H.G.* list of statutory provisions which reflect this principle section 366.26, subdivision (c)(1)(B). This provision sets forth a discrete set of grounds that a parent (or for that matter any other party) may raise in an effort to establish at a permanency planning hearing that termination would be detrimental to the child. While reunification may no longer be possible, a parent may seek to preserve his or her relationship with the child in this way.

"Injuriously Affected"

There remains the question of whether the court's denial of the grandparents' placement request injuriously affected father's interest. (*Carissa G., supra,* 76 Cal.App.4th at p. 734.) The answer in this case is no.

K.'s placement at this late stage of the dependency proceedings had no bearing on father's interest. (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 703.) The court's ruling did not preclude father from pursuing relief under section 388 to set aside the permanency planning hearing and attempt reunification. The ruling also did not prohibit father from presenting any evidence at the hearing regarding an exception under section 366.26, subdivision (c)(1)(B) to adoption as the preferred permanent plan for K. (*Cesar V., supra,* 91 Cal.App.4th at p. 1035). More to the point, had the court granted the grandparents' request, it would not have advanced father's interest. There was nothing to prevent the court at that stage from proceeding with its section 366.26 hearing, finding the child adoptable and terminating parental rights.

Nevertheless, father essentially argues he does not have to show his interest was injuriously affected, only that it *might* be affected. As mentioned above, he relies on *H.G.* and *Esperanza C.* for the proposition that he has standing because relative placement had the potential to alter the trial court's determination of the appropriate permanent plan for the child and thus may affect his (father's) interest. (*H.G., supra,* 146 Cal.App.4th at p. 10; *Esperanza C., supra,* 165 Cal.App.4th at p. 1054.)

In *H.G., supra,* 146 Cal.App.4th at page 6, a dependent child had been placed with relatives since she was first detained. On the figurative eve of the section 366.26 hearing, the child protective services agency redetained the child and filed a supplemental petition under section 387 alleging the child's relative placement was no longer appropriate. The trial court granted the agency's petition and terminated parental rights. The parents appealed. (*H.G., supra,* 146 Cal.App.4th at pp. 7-8.)

The *H.G.* court concluded the parents had appellate standing to challenge the trial court's findings and orders under section 387. (*H.G., supra,* 146 Cal.App.4th at p. 10.) Having first determined the parents retained a fundamental interest in the child even though reunification was no longer a goal of the proceedings (*id.* at p. 9), the court added:

"a placement decision under section 387 has the potential to alter the court's determination of the child's best interests and the appropriate permanency plan for that child, and thus may affect a parent's interest in his or her legal status with respect to the child." (*H.G., supra,* 146 Cal.App.4th at p. 10.)

Conceivably, a decision under section 387 to remove a child from a relative's care at the permanency planning stage would affect the parent's interest if the relative would have otherwise met the definition in section 366.26, subdivision (c)(1)(A).[3] According to section 366.26, subdivision (c)(1)(A), a court should not terminate parental rights if:

"[t]he child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child."

Standing would depend in turn on the particular facts of a case. Parenthetically, there was no evidence in *H.G.* that the relatives were unable or unwilling to adopt. They in fact had initiated the adoption process when the court terminated reunification efforts and set the section 366.26 hearing. (*H.G., supra,* 146 Cal.App.4th at p. 6.)

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[3] The *H.G.* court cited, in its analysis, the predecessor to this provision, former section 366.26, subdivision (c)(1)(D).

In any event, *H.G.* is so factually and procedurally distinct from this case that it has little bearing on the standing question here. K. was never placed with the grandparents let alone removed, pursuant to section 387, from their care prior to the section 366.26 hearing. Section 366.26, subdivision (c)(1)(A) was inapplicable in this case and would have been even had the grandparents prevailed. That is because K.'s grandparents wanted to adopt him.

By contrast, *Esperanza C.* shares some procedural similarities with this case. The trial court in *Esperanza C.* set a section 366.26 hearing after removing a dependent child from parental custody and denying the parent reunification services. When a child protective services agency later denied a relative's request for placement, a section 388 petition was brought for the court to review the agency's decision and grant the relative placement. The court denied the petition and subsequently terminated parental rights. (*Esperanza C., supra,* 165 Cal.App.4th at pp. 1050-1052.)

The appellate court determined the mother had standing to appeal the denial of the section 388 petition. (*Esperanza C., supra,* 165 Cal.App.4th at pp. 1053-1054.) The court relied on its earlier decision in *H.G.* for the proposition that until parental rights are terminated, a parent retains a fundamental interest in his or her child's companionship, custody, management and care. (*Id.* at p. 1053.) It added:

"This court has also recognized that placement of a child with a relative has the potential to alter the juvenile court's determination of the child's best interests and the appropriate permanency plan for that child, and may affect a parent's interest in his or her legal status with respect to the child. (*In re H.G., supra,* 146 Cal.App.4th at pp. 9–10; see, e.g., § 366.26, subd. (c)(1)(A) (former subd. (c)(1)(D)); see also *In re L.Y.L.* [2002] 101 Cal.App.4th [942,] 950–951.) While an alternative permanency plan to adoption may be unlikely on this record, it remains a statutory option for the juvenile court." (*Esperanza C., supra,* 165 Cal.App.4th at p. 1054.)

To the extent *Esperanza C.* broadens the applicability of its *H.G.* holding and permits standing on a hypothetical ground, we respectfully disagree. For standing purposes, a parent must show his or her interests "are injuriously affected" by the court's decision (*County of Alameda v. Carleson, supra,* 5 Cal.3d at p. 737), not that the parent's interest theoretically might be affected. A decision that has the "potential" to or "may affect" the parent's interest, even though it may be "unlikely" (*Esperanza C., supra,* 165 Cal.App.4th at p. 1054), in our view, does not render the parent aggrieved.

We therefore hold as follows. A parent does not have appellate standing to challenge an order denying a relative placement request once a permanency planning hearing is pending unless the parent can show his or her interest in the child's companionship, custody, management and care is, rather than may be, "injuriously affected" by the court's decision.

In this case, father has not made such a showing. His argument that the court's denial directly impacted his future relationship with K. is meritless. As we previously observed, had the court granted the grandparents' request, there was nothing to prevent the court at that stage from proceeding with its section 366.26 hearing, finding the child adoptable and terminating parental rights. In this respect, father confuses his fundamental interest, which would have been extinguished in any event, with the possibility he might visit K. at some future point if the grandparents saw fit. In an ironic twist, father also ignores his own conduct, in having seen K. only once in the child's life and failing to ever visit the child after dependency proceedings were initiated. Under the circumstances of this case, it was not the court's decision on the placement request that directly impacted father's interest.

We therefore conclude father is not entitled to an on-the-merits review of the trial court's ruling on the relative placement request. Because father raises no other issue in his appeal, we shall affirm.

DISPOSITION

The order terminating parental rights is affirmed.

LEVY, ACTING P.J.

WE CONCUR:

HILL, J.

KANE, J.

MONICA VOGELMANN
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Cooperstown, NY 13326

In re K.C.

Court of Appeal No. F058395
Superior Court No. 08JD0075

DECLARATION OF SERVICE

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in, or am a resident of, the County of Otsego, New York where the mailing occurs; and my business address is P.O. Box 1034, Cooperstown, New York 13326. I served the Appellant's Petition for Review by placing a true and correct copy thereof in a separate envelope addressed to each addressee listed below

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2424 Ventura Street
Fresno, CA 93721

I then sealed each envelope and with the postage thereon fully prepaid, I placed each for deposit in the United States mail at Cooperstown, New York, on June 4, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 4, 2010, at Cooperstown, New York.

_____
Victor Carrascoso