

SUPREME COURT COPY

No. S183320

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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In the Matter of  
K.C., a minor.

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KINGS COUNTY HUMAN SERVICES AGENCY,  
*Plaintiff and Respondent,*

SUPREME COURT  
FILED

v.

JUN 24 2010

J.C.,  
*Defendant and Appellant.*

Frederick K. Ohlrich Clerk  
Deputy

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After a Decision by the Fifth District Court of Appeal  
Appellate Case No. F058395

On Appeal from the Superior Court for the County of Kings,  
The Honorable George Orndoff, Judge  
Superior Court Case No. 08JD0075

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ANSWER TO PETITION FOR REVIEW

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COLLEEN CARLSON, No. 203120  
Kings County Counsel  
JOHANNAH HARTLEY, No. 253914  
Deputy County Counsel  
County Government Center  
1400 West Lacey Blvd., Law Bldg. No. 4  
Hanford, CA 93230  
(559) 582-3211, Ext. 2445  
Attorneys for Respondent,  
Kings County Human Services Agency

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Hanford, CA 93230  
(559) 582-3211, Ext. 2445  
Attorneys for Respondent,  
Kings County Human Services Agency

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## ISSUE PRESENTED

- I. Does a parent who is not receiving reunification services have standing to challenge the denial of a grandparent's Welfare and Institutions Code section 388 request for placement of the child?

## COMBINED STATEMENT OF CASE AND FACTS

The Court of Appeal's decision accurately recites the procedural and underlying facts. (*In re K.C.* (2010) 184 Cal.App.4th 120, 122-24 ("*In re K.C.*"); Slip Opn., pp. 2-4.) In short, the child K.C. was removed from his parents' care approximately one month after birth pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (j), because of the parents' substance abuse and domestic violence which had previously resulted in the removal of K.C.'s six siblings.<sup>2</sup> (*In re K.C.* at 122; Slip Opn., p. 2.) Additionally, the child K.C. was a passenger in a car driven by his mother when his older brother, a runaway Tulare County dependant, jumped out of the moving vehicle and subsequently died. (1 CT 0014-16, 0028.) Reunification services were bypassed for both the mother and father based on Section 361.5, subdivisions (b)(10), (11) and (13). (*In re K.C.* at 122; Slip Opn., p. 2.)

During the course of the dependency proceedings, the paternal grandparents requested placement of K.C. and the Kings County Human Services Agency (hereinafter "Agency") completed the Placement Assessment for Relatives on the paternal grandparents' behalf. (*In re K.C.* at 122; Slip Opn., p. 2.) Although the Agency determined that the paternal grandparents' home met the basic requirements for licensing pursuant to Section 361.4, after granting an exemption for the paternal grandfather's criminal history, the placement request was denied. (*Id.*; 3 CT 0559; 8 RT

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<sup>2</sup> All further statutory references are to the California Welfare and Institutions Code unless otherwise indicated.

1070.) The Agency determined that the home did not meet the requirements under Section 361.3 in assessing K.C.'s best interest for numerous reasons including the paternal grandparents' inability to meet K.C.'s needs because of the demands of caring for five children under the age of eleven with varying emotional and behavioral problems, history of neglecting children with special needs, demonstrated inability to protect children from obvious threats, and lack of diligence in developing a relationship with K.C. (3 CT 0562-0577.)

The paternal grandparents' filed a Section 388 petition requesting placement of the child K.C. with the goal of adoption. (*In re K.C.* at 123; Slip Opn., p. 3.) The paternal grandparents were in the process of adopting five of K.C.'s siblings, dependants in Tulare County, who had each displayed behavioral or emotional problems ranging from bed wetting and hoarding food to post traumatic stress disorder. (*Id.*; See 3 CT 0562-0577.) The paternal grandparents had a long history of interacting with child protective services and law enforcement regarding the parents' substance abuse and domestic violence while the family resided on their property and in their home. (*Id.*) Additionally, another grandchild with a history of mental health issues and suicidal tendencies attempted suicide at the paternal grandparents' home by overdosing on the paternal grandfather's easily accessible diabetes medication. (*Id.*)

A hearing pursuant to Section 388 and Section 366.26 was held on August 20-21, 2009. On August 21, 2009, the juvenile court denied the paternal grandparents' Section 388 petition and proceeded to terminate parental rights. (*In re K.C.* at 123; Slip Opn., p. 3.)

The father J.C. filed a notice of appeal with the Kings County Superior Court on August 27, 2009, challenging both the denial of the paternal grandparents' Section 388 petition and the termination of his parental rights. (*Id.*; 4 CT 1037-1038.) The paternal grandparents filed a



cross-appeal from the denial of their Section 388 petition on November 4, 2009, which was assigned a separate appellate case number, F058868. The paternal grandparents' cross-appeal was dismissed for being untimely. (*In re K.C.* at 123 n.2; Slip Opn., p. 4 n.2.) The Court of Appeals for the Fifth Appellate District held that the father J.C. lacked standing to appeal the denial of the grandparents' Section 388 request for placement.

### ARGUMENT

#### **I. THE COURT OF APPEAL'S OPINION DOES NOT MEET THE CRITERIA FOR REVIEW BY THIS COURT.**

It is a well established legal principal that to have standing to appeal a court's decision a person must have rights that suffer injury. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730; See generally *Baker v. Carr* (1962) 369 U.S. 186, 204; Cal. Welf. & Inst. Code § 395(a)(1); Cal. Civ. Pro. Code § 902.) To be considered an "aggrieved party" entitled to review of a court's ruling on the merits the party "must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision." (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.) A parent in a dependency case has standing to raise issues affecting his or her interest in the parent-child relationship. (*In re Patricia E.* (1985) 174 Cal.App.3d 1, 6 (overruled in part by *In re Celine R.* (2003) 31 Cal.4th 45).) However, a "parent cannot raise issues on appeal which do not affect his or her own rights. That is, a parent's interest is in reunification." (*In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541 (citing *In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1806-1808).) Furthermore, "Appellant's interest must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment." (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737 (quotation omitted).)

In applying these general principles the Court of Appeals for the Fifth Appellate District in *K.C.* used a two-part test to determine that the

father was not aggrieved by a Juvenile Court order denying placement of the child with the grandparents. First, the Court examined whether the parent had a legally cognizable interest, which the father did. (*In re K.C.* at 125-6; Slip Opn., pp. 5-6.)<sup>3</sup> Second, the Court examined whether the parent's interest was injuriously affected by the Juvenile Court's decision, which it was not. (*In re K.C.* at 126-8; Slip Opn., pp. 7-10.) Based on the Court's adherence to the well established legal rules of standing review is not warranted under Rule of Court 8.500(b)(1).

Petitioner relies on the case of *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, to establish a split of authority on the issue of standing necessitating appellate review to secure uniformity of decision. (Petition for Review, pp. 3, 7.) However, the Third District previously decided in *Cesar V.* that a parent not receiving reunification services lacks standing to appeal the denial of placement with a relative. (*In re Cesar V.* (2001) 91 Cal.App.4th 1023, 1035.) Furthermore, several districts have limited a parent's right to appeal in dependency cases establishing that a parent's primary interest is in reunification services and not in the relationship of the child with his or her siblings or grandparents. (*In re Devin M.* (1997) 58 Cal.App.4th 1538; See also *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261 (father may not challenge denial of defacto status to his relatives); *In re Gary P.* (1995) 40 Cal.App.4th 875, 876-77 (mother appealing from termination of her parental rights had no standing to raise issues affecting the grandmother's interests in contact with the minors).)

In *In re Cesar V.* (2001) 91 Cal.App.4th 1023, the father and paternal grandmother sought extraordinary review of the Juvenile Court order denying placement with the paternal grandmother. The father's

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<sup>3</sup> Should this Court grant review, Respondent respectfully requests, though its framing of the issue, that standing as a whole be considered. (Cal. Rules of Court, Rule 8.500(a)(2).)

reunification services were terminated and at the Section 366.26 hearing the father challenged the agency's denial of placement of his children with their paternal grandmother. (*Id.* at 1026.) The father filed a Section 388 petition regarding the suitability of the paternal grandmother for placement which was denied without hearing. (*Id.* at 1030.) In regards to standing, the Court stated that the father "has no standing to appeal the relative placement preference issue. Especially in light of his stipulation to terminate reunification services, we cannot see how the denial of placement with [the paternal grandmother] affects his interest in reunification with the children." (*Id.* at 1035.) The Court, however, found that the issue was properly before the Court because the paternal grandmother had also sought extraordinary review from the order denying her placement. (*Id.*)

In *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, the Court held that the mother and child who each filed Section 388 petitions regarding placement had standing to challenge the agency's placement decision. Both Section 388 petitions requested that the child be placed with a great-uncle who had been denied placement based on his criminal history and the lack of an agency issued exemption. (*Id.* at 1050.) In determining that the mother and child had standing to appeal denial of their Section 388 petitions the Court noted the parent "retains a fundamental interest in his or her child's companionship, custody, management and care" until parental rights are terminated because "placement of a child with a relative had the potential to alter the Juvenile Court's determination of the child's best interest 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." (*Id.* at 1053-1054.)

Similar to *Cesar V.*, reunification services were bypassed for the father and the bypass recommendation was not contested by the father or his counsel. Unlike *Esperanza C.*, the father did not file his own Section

388 petition and the paternal grandfather was granted a criminal exemption, thus allowing the home to be approved from a licensing standard. Furthermore, all parties recognized the likelihood that the child would be adopted and the paternal grandparents indicated they were willing to adopt K.C. Therefore, the father's legal status toward the child would remain unchanged based on the child's placement and he was not injuriously affected by the Juvenile Court's decision.

**CONCLUSION**

The Fifth District correctly applied the well established rules of standing when holding that Petitioner did not have standing to contest the denial of the paternal grandparents' Section 388 request for placement of the minor K.C. For all these reasons, Respondent respectfully requests that this Court deny the Petition for Review.

Dated: June 23, 2010

Respectfully submitted,

COLLEEN CARLSON  
County Counsel



By JOHANNAH HARTLEY  
Deputy County Counsel  
Attorneys for Respondent,  
Kings County Human Services Agency

## CERTIFICATION OF WORD COUNT

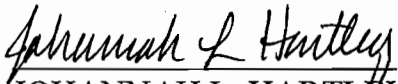
I, Johannah L. Hartley, counsel for the Kings County Human Services Agency, hereby certify that pursuant to Rule 8.504(d)(1) of the California Rules of Court, I prepared the foregoing brief, and that the word count for this Respondent's Answer to Petition is 1,915 words, not including the cover and the tables. I certify that I prepared this document in Microsoft Word 2003 word-processing program, and that this is the word count generated by this program for this document.

Dated: June 23, 2010

Respectfully submitted,

COLLEEN CARLSON  
County Counsel

By

  
JOHANNAH L. HARTLEY  
Deputy County Counsel

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Program  
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Sacramento, CA 95816

14 Petitioner's Counsel  
15 Monica Vogelmann  
16 P.O. Box 1034  
17 Cooperstown, NY 13326  
18 (Clients Copy On  
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State of California  
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23 Minors Advocate  
24 1400 West Lacey Blvd.  
25 Hanford, CA 93230  
26 (Hand-Delivered)

27 I declare under penalty of perjury that the foregoing is true and correct.  
28 Executed on June 23, 2010, at Hanford, California.

  
CINDY LOPES

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