No. S183320

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of
K.C., a minor coming under the Juvenile Court law.

KINGS COUNTY HUMAN SERVICES AGENCY,
Plaintiff and Respondent,

v.

J.C.,
Defendant and Appellant.

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

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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
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Attorneys for Respondent,
Kings County Human Services Agency

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v.	)	Kings County Superior Court No. 08JD0075
J.C., Defendant/Appellant.	)	**RESPONDENT'S ANSWER BRIEF ON THE MERITS**

ISSUE PRESENTED

Does a noncustodial parent who is not receiving reunification services and has only visited his eleven-month old child once have standing to challenge the denial of a grandparent's request for placement of the child when the parent fails to show that the placement order adversely affects his parental interest in the child?

INTRODUCTION

In this juvenile dependency case, the California Court of Appeals, Fifth Appellate District held that the noncustodial, presumed father, J.C. (hereinafter "Appellant" or "father"), lacked standing to appeal the denial of the paternal grandparents' request for placement of the child K.C. Respondent Kings County Human Services Agency (hereinafter "Agency") respectfully submits that the Fifth District's opinion should be affirmed because it soundly addresses the issue of standing, applying well established legal principles in determining that the father, who was not receiving reunification services and had minimal contact with the child, was not injuriously affected by the denial of the grandparents' request for placement of the child, and therefore lacked standing.

Over the course of the last decade, Appellant has been incarcerated

on numerous criminal charges, seven of his children have been removed from his care and he has failed to reunify with his children resulting in the termination of his parental rights. In regards to K.C., the youngest child and the child subject to this appeal, Appellant failed to establish a relationship with K.C., failed to ameliorate the conditions which resulted in the detention of K.C. and the bypassing of services, and failed to prove that any of the exceptions to termination of his parental rights were applicable. Appellant's contention that joining in the paternal grandparents' request for placement is sufficient to confer appellate standing is erroneous. Appellant's legal interest in K.C.'s placement substantially diminished when the Juvenile Court bypassed reunification services for Appellant and set a Welfare and Institutions Code section 366.26 selection and implementation hearing.[1] Furthermore, Appellant failed to show that he was aggrieved by the placement decision as his rights under Sections 366.21, subdivision (h), to visit K.C., 388 to petition for services and 366.26, subdivision (c)(1)(B), to object to adoption as the appropriate permanent plan remained intact, although unutilized, and any harm to a potential future relationship with K.C., where no current relationship existed, is too speculative to support appellate standing.

COMBINED STATEMENT OF CASE AND FACTS

The child K.C. was removed from his mother A.M.'s care on October 30, 2008, approximately six weeks after birth. (1 CT 0051.) K.C. was brought to the attention of the Agency on October 25, 2008, when he was a passenger in a car driven by his mother from which his older brother, a runaway Tulare County dependent, "jumped" out of the moving vehicle and subsequently died. (1 CT 0014-16, 0028.) The Agency filed a Welfare and Institutions Code section 300, subdivisions (b) and (j), petition

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

regarding the mother's substance abuse and domestic violence which had previously resulted in the removal of K.C.'s six siblings.[2] (1 CT 0021-25.)

1. Detention Hearing

A detention hearing was held on November 4, 2008. The father J.C. was present at the hearing even though the Agency was only able to provide substitute notice of the hearing to the father by contacting the paternal grandparents on November 3, 2008. (8 RT 1063; 1 CT 0031.) The paternal grandparents were also present and requested placement of K.C. (1 RT 8-9.) The court ordered the child detained and the child was placed in a foster home pursuant to a general placement order. (1 RT 6; 1 CT 0062.) The court found that J.C. was the presumed father of K.C. and ordered J.C. to keep the Agency advised of his residence and mailing address. (1 CT 0062.)

Ms. Watts, the social worker assigned to the case, met with the father after the court hearing and provided the father with information on how to contact the Agency. (1 CT 0091.) The father indicated that he would be entering the Salvation Army's Adult Rehabilitation Center. (1 CT 121.) Ms. Watts' attempts to contact the father after the detention hearing and to validate his residency at the Salvation Army were unsuccessful. (1 CT 0091-94.) In the jurisdiction/disposition report filed on December 5, 2008, Ms. Watts stated that the father "has not requested placement of the child, has not attempted to visit the child, nor has he contacted the undersigned to inquire of his child's well being." (1 CT 0096.)

2. Jurisdiction and Disposition Hearing

The next appearance by the father was at the jurisdiction and

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[2] J.C. and A.M. are the biological parents of eight children: one died at birth, one died in the incident noted above, five are Tulare County dependents being adopted by their paternal grandparents, and K.C., the child at issue in this case, is a Kings County dependent.

disposition hearing on December 10, 2008. (2 CT 0468.) The father, through his counsel, submitted on the social worker's report and recommendation and the Kings County Superior Court found the allegations of the petition true. (2 RT 103, 105-6; 2 CT 0471.) Reunification services were bypassed for both J.C. and A.M. based on Welfare and Institutions Code section 361.5, subdivisions (b)(10) (termination of J.C. and A.M.'s reunification services for K.C.'s siblings), (11) (termination of J.C. and A.M.'s parental rights for K.C.'s siblings) and (13) (J.C. and A.M.'s chronic untreated history of drug or alcohol use). (2 CT 0471-74.) J.C. had substantial criminal and child protective services history dating back to 1999. (1 CT 0090, 1 CT 0126—2 CT 0465.) The court ordered that "[c]are, custody, and control of K[.C.] is placed under the supervision of the agency" and set a Section 366.26 hearing to select and implement a permanent plan for the child. (2 RT 107, 110; 2 CT 0473-74.)

3. K.C.'s Placement

Ms. Watts continued to assess the paternal grandparents for placement after the disposition hearing. (1 CT 0096-7.) On December 10, 2008, Ms. Watts conducted a homestudy interview with the paternal grandparents at the Agency and on December 17, 2008, Ms. Watts conducted a home inspection at the paternal grandparent's residence. (2 CT 0558, 3 CT 0891—4 CT 0904.) 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 pursuant to Section 361.3. (2 CT 0559; 8 RT 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:

1) the paternal grandparents' failure to disclose the location of

the mother and the child to the Agency in October of 2008;[3]

2) the paternal grandparents' failure to disclose all adults living on their property;
3) 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;
4) placement would exceed the paternal grandparents' ability to care for and supervise K.C.;
5) the paternal grandparents' history of neglecting children with special needs based on their grandchild's suicide attempt in their home;[4]
6) the paternal grandparents' demonstrated inability to protect children from obvious threats based on their allowing the parents to reside in their home or on their property for the past 16 years during which time three children were born drug exposed, two dependency cases were pursued through the

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[3] The maternal great grandmother informed the investigating social worker in October 2008 that A.M. occasionally stayed with the paternal grandparents. However, the maternal great grandmother was not alive at the time of the contested hearing in August 2009. (2 CT 0562-63; 7 RT 887.) Furthermore, the paternal grandparents' noted on the placement questionnaire that they had a good relationship with A.M. and were able to inform the court of the location of the parents in April 2009. (3 CT 0896; 4 RT 404, 406.) The paternal grandfather testified that he knew J.C.'s whereabouts, but he had not had any contact with J.C. since K.C.'s five siblings were placed in his care on February 28, 2008. (7 RT 884-85; 2 CT 0314, 0321.)

[4] On August 14, 2007, K.C.'s oldest sibling, 14, who is now deceased, was hospitalized for taking the paternal grandfather's diabetes medication in an attempted suicide. (4 CT 0980; 7 RT 883.) This was the child's second suicide attempt in a month. On July 15, 2007, the child was released from the hospital for a suicide attempt that also involved taking pills. (4 CT 0980; See also 1 CT 0218.) On August 14, 2007, the paternal grandmother called the school to state that the child would not be in attendance as he was not feeling well. (7 RT 903.) Mr. Giampietro, the principal, and the school nurse went to the paternal grandparents' home. When the school nurse arrived at the residence "she attempted to wake [the child], and when he failed to respond she called 911." (1 CT 0234; 4 CT 0982; See also 7 RT 853.) However, the paternal grandmother testified that she called the paramedics after the school personnel arrived at her home and she realized that the child needed treatment. (7 RT 904.) According to the paternal grandmother, the medications that the child took were not locked up in the house but were in a high cabinet. (*Id.*) However, according to the 2007 Tulare County detention report, the paternal grandfather noticed approximately 30 pills of his diabetes medication, which were stored in the kitchen drawer, were missing. (1 CT 0234; 4 CT 0982.)

Juvenile Court, one of which in 2000 resulted in the termination of services for the mother who afterward continued to live with paternal grandparents;[5]

7) the paternal grandparents' lack of diligence in developing a relationship with K.C.; and

8) inadequate space in the paternal grandparents' home which would prevent permanency planning for K.C. as the home would not meet licensing standards when the child turned two years old.

(2 CT 0562-77.)

Between March 18-24, 2009, placement of K.C. with the paternal grandparents was reconsidered by the Agency's Program Manager Tina Garcia who reviewed the files, taking into consideration correspondence from the paternal grandparents. (2 CT 0562.) As program manager, Ms. Garcia had the authority to overrule Ms. Watts' placement determination. (8 RT 1045.) Upon conclusion of her review of the paternal grandparents, Ms. Garcia determined placement was inappropriate for K.C. based on Section 361.3. (2 CT 0562; 8 RT 1045.) Ms. Garcia sent a letter to the grandparents on March 24, 2009, outlining the reasons for the Agency's denial of placement. (3 CT 0690-96.) On March 19, 2009, K.C. was moved to the foster home where he currently resides. (2 CT 0548-50.)

4. Paternal Grandparents' Section 388 Placement Petition

On April 16, 2009, the paternal grandparents' filed a Section 388 petition requesting placement of K.C. with the goal of adopting K.C. (3 CT 0778-800.) A hearing pursuant to Section 388 and Section 366.26 was held on August 20-21, 2009.

Between the December 10, 2008 disposition hearing and the August

[5] See 1 CT 0237 (A.M. stated she was living with the paternal grandparents until September of 2007 when she was asked to leave, but planned on returning); 2 CT 0334, 0571; 3 CT 0697 (Tulare County's due diligence search for A.M. was closed because A.M. registered a new address on April 3, 2008, through the Department of Motor Vehicles, approximately 0.22 miles from the paternal grandparents' home). See also 1 CT 0258-59 (declaration of the paternal grandfather stating that he found illegal substances on his property).

20, 2009 contested hearing the father made no contact with the Agency. In fact, the paternal grandparents were present at the initial Section 366.26 hearing on April 8, 2009, at which they indicated that J.C. and A.M. were in custody resulting in a continuation of the hearing. (4 RT 404, 406; 3 CT 0700.) The California Department of Corrections, Wasco State Prison transported the father for the August 20-21, 2009 contested hearing. (4 CT 0937, 1020.) The father did not present any evidence in support of the paternal grandparents' Section 388 petition. (7 RT 910.) The father did join in the arguments of the paternal grandparents and indicated, through his attorney, that he wanted K.C. placed with his parents. (8 RT 1098-99.)

At the August 20-21, 2009 contested hearing the Juvenile Court took judicial notice of its file and received the following testimony. (7 RT 911.)

a. Paternal Grandparents' Evidence

The paternal grandparents' presented the testimony of two Tulare County social workers, Elizabeth Mason and Felicity Moreno, Andrew Galvan, the gentleman who resided in a trailer/R.V. on their property, Thomas Giampietro, the superintendent of Monson-Sultana, the school attended by four of their grandchildren, and Janice Rush, a teacher at Monson-Sultana who had two of their grandchildren in her class. Additionally, the grandparents each testified. (4 CT 1022, 1027.)

First, Tulare County social workers Elizabeth Mason and Felicity Moreno testified that the paternal grandparents were in the process of adopting K.C.'s five siblings who were all dependents of the Tulare County Juvenile Court. However, neither social worker was responsible for the initial placement of the children, was not in the relative placement division of their agency, and had not met or assessed K.C. (7 RT 822-23, 834-35.) Ms. Mason testified that she had not observed any problems with the paternal grandparents care of the five children. (7 RT 812.) According to Ms. Mason the five children had behavior problems for which mental

health treatment was sought and diagnoses varied from post traumatic stress disorder, to dysthymic and attachment disorder. (7 RT 812, 817-18; 2 CT 0381-85; 3 CT 0798, 0815, 0883.) The paternal grandparents were "more or less" in compliance with the therapists recommended treatment for the children. (7 RT 818; 3 CT 0883.) Ms. Mason acknowledged that one child had stopped seeing the therapist for a while and after Ms. Mason spoke to the therapist and the paternal grandparents the child restarted therapy. (7 RT 818.)

Next, Andrew Galvan, paternal great cousin, testified that since 2006 he has resided in a trailer/R.V. on the paternal grandparents' property and Tulare County had granted an exemption for his criminal history when assessing the paternal grandparents for placement of K.C.'s five siblings. (7 RT 839-40, 843; See also 3 CT 0603-604, 0812-13.)

Next, Tom Giampietro and Janice Rush from Monson-Sultana School, which four of K.C.'s siblings attended, testified.[6] Mr. Giampietro, the principal and superintendent, testified that since the children had been in the paternal grandparents care in the year 2008-2009 the children's school attendance and grades had improved. (7 RT 847-49.)

Finally, the paternal grandparents testified. The paternal grandmother, a retired certified nursing assistant, and the paternal grandfather, also retired, care for their five grandchildren whom they are in the process of adopting through the Tulare County Juvenile Court. (7 RT 895, 903; 3 CT 851.) The paternal grandmother testified that she initially learned of K.C.'s existence when Kings County social worker Ms. Watts telephoned her to inform her that the child had been detained and to inquire if she was interested in placement. (7 RT 887.) The paternal grandmother stated that she was present when Ms. Watts conducted the homestudy and

[6] Three of the children were under the care of the paternal grandparents and the fourth was the deceased child previously mentioned.

she did not relay the information of Mr. Galvan residing on the property to Ms. Watts. (7 RT 888.) However, on cross examination the paternal grandmother stated that she did tell Ms. Watts that Mr. Galvan resided in a motor home on the property. (7 RT 908.) The paternal grandmother stated that K.C.'s parents previously resided in a rental home on their property approximately 600 feet from their home. (7 RT 889-90, 892.) She further stated that the parents had never lived in her home, but she admitted that one grandchild lived in their home as an infant along with J.C. (7 RT 901, 891.) On cross examination, she clarified that the parents had lived in her garage and the garage was attached to her house. (7 RT 909-10.) Additionally, in a declaration signed by the paternal grandmother, attached to a Tulare County 2007 jurisdiction/disposition report, she stated that her son, J.C., and his wife A.M. "have six (6) children and reside at our residence...." (1 CT 0254.) The paternal grandfather testified that the children had always lived on his property or near him and that for a time they lived in a house 600 feet away from his residence. (7 RT 874.) The paternal grandmother stated that she had no contact with the children's father or mother since gaining custody of the children in 2008, with the exception of letters she received from J.C. (7 RT 896, 898.) The paternal grandfather, when asked if the reason that the children in his care had not seen their parents for the last year was because he prevented contact, testified that, "It's because they've been in jail and prison." (7 RT 874.)

b. Agency's Evidence

In opposition to the Section 388 petition the Agency presented the testimony of program manager, Tina Garcia, and social workers Christy Watts and Simon Puente. (4 CT 1027.) Ms. Garcia, who has a masters degree in social work and worked for the Kings County Human Services Agency since 1997, testified as an expert in the fields of social work and child placement procedures in Kings County. (8 RT 1005; 2 CT 0580-94.)

Ms. Garcia indicated that she had reviewed all Kings and Tulare County reports regarding the child K.C. and his seven siblings. (8 RT 1005.) Ms. Garcia opined that placement of K.C. with the paternal grandparents was not in the child's best interest. (8 RT 1006-1007.) The reasons for this opinion included:

- the lack of bond or relationship between the paternal grandparents and K.C. based on only five visits over the course of ten months,
- the inability of the paternal grandparents to protect K.C. from his parents based on their sixteen years of providing support and thus facilitating the parents' substance abuse,
- the paternal grandparents' inability to meet K.C.'s needs because they are responsible for five children, ages 2 through 11, a majority of whom were drug exposed,
- the paternal grandparents' decision not to continue therapy for their grandchildren despite contrary recommendations of the children's therapist, and
- concerns with contact by the parents in the future.

(8 RT 1007-10.) Ms. Garcia acknowledged that the five Tulare County dependents appeared to be adequately cared for by the paternal grandparents, however she was required to assess K.C. and his best interest. (8 RT 1009, 1014, 1043.) She also noted that the Agency is highly favorable to relative placement as Kings County is one of the top ten counties in the State for placing dependents with their relatives. (8 RT 1015; 2 CT 0561.) In regards to K.C.'s sibling group and maintaining the group, Ms. Garcia commented that this was a primary consideration, but determined that based on K.C.'s individual needs as an infant it would not be in his best interest to maintain the sibling group with whom he was not bonded. (8 RT 1011-12.)

Kings County social workers Mr. Puente and Ms. Watts testified as to the visitation between the paternal grandparents and K.C., and the paternal grandparents' placement assessment. The paternal grandparents had five Agency scheduled visits with K.C. and one visit before

dependency proceedings were initiated; although the paternal grandfather testified that he had only seen K.C. on three occasions. (7 RT 869; 8 RT 1052-53; 3 CT 0896; 4 CT 1016.) During the paternal grandparents' supervised visits with K.C. one sibling "displayed very jealous behavior, acted out during the entire visitation, and refused to acknowledge K[.C.]" and the paternal grandfather had limited contact with K.C. (2 CT 0572; 8 RT 1054-55, 1057.) K.C.'s current caretaker on May 5, 2009, noted that "K[.C.] has had one visit with his birth family. Upon return he was visibly upset and had been crying. It took four days for K[.C.] to return to his happy self back on his routine." (3 CT 0756.)

K.C.'s attorney joined in the Agency's opposition to the paternal grandparents' Section 388 petition. (8 RT 1100-1103.)

c. The Juvenile Court's Denial of the Paternal Grandparents' Section 388 Petition

The Juvenile Court, after considering the evidence presented and reviewing its entire file, denied the paternal grandparents' Section 388 petition. (4 CT 1026, 1030.) The court found that the paternal grandparents would be unable to adequately provide for K.C.'s needs, to provide a safe, secure environment, and to protect K.C. from his parents. (4 CT 1029; 8 RT 1112.) The court ordered "[r]esponsibility for placement, care, custody, and control of K[.C.]" would remain with the Agency. (8 RT 1113.)

5. Section 366.26 Hearing Terminating Parental Rights

Following the conclusion of the Section 388 hearing the Juvenile Court proceeded with the Section 366.26 selection and implementation hearing regarding K.C. The Section 366.26 report submitted by the Department of Social Services—Adoptions on behalf of the Agency opined that the infant K.C. was generally adoptable based on his age, normal development, emotional health, and general physical health. (2 CT 0544-

52.) Furthermore, the child was placed in a home committed to adopting the child and the child's caretaker/prospective adoptive parent submitted both a letter to the court and a caretaker information form noting that the child had become a member of her family. (2 CT 0548-50; 3 CT 0846-48.) The author of the Section 366.26 report, Janet Patten, who has a masters degree in social work and approximately 12 years of experience in social work, testified that K.C. had been placed in the caretaker's home for five months and was generally adoptable. (8 RT 1120-21.)

In opposition to the permanent plan of adoption for K.C., the father testified that he had one visit with the child and did not want his parental rights terminated. (8 RT 1125.) However, he did not cite or argue any of the Section 366.26 exceptions to termination of parental rights. (8 RT 1129.)

On August 21, 2009, the Juvenile Court terminated J.C. and A.M.'s parental rights over the child K.C. (4 CT 1035.)

6. Appeal

The father, through his counsel, 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. (4 CT 1037-38.) The paternal grandparents filed a cross-appeal from the denial of their Section 388 petition on November 4, 2009. (See Fifth District Court of Appeal Case No. F058868.) The paternal grandparents' cross-appeal was dismissed for being untimely. (*Id.*; *In re K.C.* (2010) 184 Cal.App.4th 120, 123 fn.2 ("*In re K.C.*"); Slip Opn., p. 4 fn.2.) In the father's opening brief to the Fifth District, he argued error only regarding the placement decision and did not cite any errors regarding termination of his parental rights. (Appellant's Opening Brief, Fifth District Court of Appeal Case No. F058395, pp. 35-36.) The Court of Appeals for the Fifth Appellate District held that the

father lacked standing to appeal the denial of the grandparents' Section 388 request for placement. (*In re K.C.* at 122-24; Slip Opn., pp. 2-4.) The Fifth District dismissed the father's appeal affirming termination of parental rights because the father raised no issues on appeal regarding the termination of his parental rights. (*Id.* at 129; Slip Opn., pp. 10-11.) The following appeal ensued.

SUMMARY OF ARGUMENT

Standing to appeal is jurisdictional. (*In re Frank L.* (2000) 81 Cal.App.4th 700.) Since 1861 this Court has acknowledged and applied the standing doctrine limiting access to the appellate courts to aggrieved parties. This doctrine has assisted an overburdened court system to administer justice in cases of actual controversy to persons who have suffered actual harm. While numerous cases have interpreted the meaning of a "party" and "aggrieved" both elements remain as the foundation to determine if an appellate court has jurisdiction based on the standing doctrine. Accordingly, for a parent in a juvenile dependency case to have appellate standing the parent must be an aggrieved party; meaning the parent has a legally cognizable interest that is injuriously affected by the Juvenile Court's ruling. The injury to the interest must be actual, immediate, and substantial. The injury may not be nominal, remote, or speculative. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730.) These well established principles were affirmed by the Court of Appeals for the Fifth Appellate District in *In re K.C.* The Fifth District held that a parent was not aggrieved by the Juvenile Court's ruling regarding a petition for placement filed by the grandparents, and therefore lacked standing to appeal.

Appellant's contention that as a parent who is a potentially aggrieved party he should be entitled to appeal promotes speculation over certainty. To allow a potential injury from a possible future interest, such

as a future relationship with a child where no current relationship exists, negates the well established doctrine of standing. A parent, who is not receiving reunification services, should not be entitled to appeal the petition of another party for placement of the parent's child. The termination of reunification services severely limits a parent's interest in the dependent child as the goal of dependency shifts from reunifying the family to determining the appropriate permanent plan for the child. Although placement with a relative is preferred to the extent such placement is safe and in the child's best interest, such placements are not mandated. Denial of a relative's request for placement does not create a right of appeal by a parent. Further more, the possibility that a parent may become a legal sibling to the dependent through kinship adoption does not create a special right in the parent to establish appellate standing.

ARGUMENT

I. TO HAVE APPELLATE STANDING AN AGGRIEVED PARTY MUST SUFFER AN ACTUAL INJURY.

It is a well established legal principle that to have standing to appeal a court's decision a party must have rights that suffer injury. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730.) Thus, appellant must be an aggrieved party. (Cal. Civ. Proc. Code, § 902.) "One has no standing to appeal if one is not aggrieved." (*In re D.R.* (2010) 185 Cal.App.4th 852, 859.) An aggrieved party is "one who has an interest recognized by law in the subject matter of the judgment" and whose interest is directly and injuriously affected by the judgment. (*Buffington v. Ohmert* (1967) 253 Cal.App.2d 254, 255; *Garrison v. Board of Directors* (1995) 36 Cal.App.4th 1670, 1676 [applying the directly and injuriously affected requirement].) Appellate review of a court's ruling on the merits requires the aggrieved party's interest be "immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment." (*County of*

Alameda v. Carleson, *supra*, 5 Cal.3d at 737 [quoting *Leoke v. County of San Bernardino* (1967) 249 Cal.App.2d 767].) In the juvenile dependency context, a parent 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 on other grounds 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].)

In the present case, the Fifth District correctly denied the father standing requiring him to suffer an actual injury to a legally cognizable interest for the following reasons. First, Code of Civil Procedure section 902, which requires that a party be aggrieved to have standing, applies to dependency proceedings and should be strictly construed. Second, the aggrieved party requirement is a well established principle of California law and relaxing the requirement to allow potential future injury is inconsistent with the standing doctrine. Third, the father's interest in the child was diminished by the bypassing of reunification services and the setting of the Section 366.26 selection and implementation hearing. Fourth, requiring actual injury protects the integrity of the appellate process, the importance of the child in dependency proceedings, and the need for promptly stabilizing a child's placement when family reunification is not possible.

a. Code of Civil Procedure section 902 governs the standing requirement for juvenile dependency appeals by analogy.

Juvenile dependency proceedings are special proceedings governed by Welfare and Institutions Code section 300 et seq. and California Rules of Court, rule 5.500 et seq. (See *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 711.) Appeals from Juvenile Court judgments are governed by

Section 395, subdivision (a)(1), and Rule 5.585; however, neither explicitly state a standing rule as enumerated in Code of Civil Procedure section 902. While the provisions of other statutory schemes, such as the Code of Civil Procedure, generally do not apply to dependency law, "in the absence of a dispositive provision in the Welfare and Institutions Code" other statutory schemes provide guidance. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 679; See also *In re H.S.* (2010) 188 Cal.App.4th 103, 107.) Code of Civil Procedure section 902 applies to appeals in dependency proceedings by analogy. "[B]asic appellate principles codified in Code of Civil Procedure sections 901 through 923 apply in juvenile dependency proceedings, at least to the extent not inconsistent therewith." (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 208 [citations and quotations omitted].)

Code of Civil Procedure section 902 must be applied strictly when determining whether an aggrieved party is involved. (See *Kunza v. Gaskell* (1979) 91 Cal.App.3d 201, 206; *In re Pacific Standard Life Ins. Co.* (1992) 9 Cal.App.4th 1197, 1200.) Any liberal construction of the right to appeal does not negate the "aggrieved" requirement for appellate standing. Thus, while the "right of appeal is remedial and in doubtful cases the doubt should be resolved in favor of the right whenever the substantial interests of a party are affected by a judgment," the appealing party must still be aggrieved. (*People by Webb v. Bank of San Luis Obispo* (1907) 152 Cal. 261, 265; See also *Koehn v. State Board of Equalization* (1958) 50 Cal.2d 432, 435 [acknowledging the aggrieved party requirement in spite of the remedial interpretation of appellate rights].) In the cases cited by Appellant regarding the relaxed appellate standards favoring the right of appeal, the parties at issue had rights that suffered injury and were at jeopardy of being barred from appellate review for other reasons. (See Appellant's Opening Brief on the Merits, p. 20.) For example, the court's concern in *Ajida Techs. v. Roos Instruments* (2001) 87 Cal.App.4th 534, 540, regarded

whether there was an actual pending dispute between the parties. The court held that the appellant had standing in part because the parties agreed that the appellant was "an aggrieved party within the meaning of section 902" and because the parties were able to show the court that there was a current dispute between the parties. (*Id.*; See also *Aries Dev. Co. v. Cal. Coastal Zone Conservation Comm'n.* (1975) 48 Cal.App.3d 534, 541 [holding that a party who clearly suffers injury, but was subject to a motion to vacate filed prior to the appeal, had standing].)

b. A parent who is not receiving reunification services does not suffer an immediate, cognizable injury in the denial of a grandparent's request for placement of the child.

For a parent who is a party of record in a juvenile dependency proceeding to have standing to appeal a ruling of the Juvenile Court, the parent "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.) Thus, the parent must be an aggrieved party. To be aggrieved, a party in a dependency case must be injuriously affected by the Juvenile Court's ruling in an "immediate and substantial" manner and "not as a nominal or remote consequence." (*Id.*) Furthermore, "a parent is not aggrieved when the challenged order has no impact on the parent-child relationship, but instead affects someone else. A parent 'lacks standing to raise issues affecting another person's interests.' In other words, 'an appellant must demonstrate error affecting his or her own interests in order to have standing to appeal.'" (*In re Paul W.* (2007) 151 Cal.App.4th 37, 44 [citations and quotations omitted].) "It is elementary that an appellant is entitled to assign for error only such proceedings in the trial court as *injuriously affect him*, without regard to the errors of which others might complain." (*Nichols v. Nichols* (1933) 135 Cal.App. 488, 491 [emphasis added].)

The principle that a party must suffer an injury to have appellate standing is well established in California law from 1861 to the present. (*Ely v. Frisbie* (1861) 17 Cal. 250, 260 [party must be aggrieved to appeal]; *Fitch v. Board of Supervisors* (1898) 122 Cal. 285 [see generally for injuriously affected requirement]; *Estate of Colton* (1912) 164 Cal. 1 [party whose legally cognizable interest was injuriously affected by court decree could appeal]; *In re D.R.* (2010) 185 Cal.App.4th 852, 858-59.) The aggrieved party requirement was codified in 1871 as Code of Civil Procedure section 938. (Cal. Civ. Proc. Code, § 938 repealed in 1968, currently § 902.) "It is a fundamental rule of appellate jurisdiction that every appellant must be interested in the subject matter of the litigation, and his interest must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment." (*Hamilton v. Hamilton* (1948) 83 Cal.App.2d 771, 774.)

The concept of standing is also well established in federal law originating in Article III of the United States Constitution and traced through numerous United States Supreme Court cases from *Marbury v. Madison* (1803) 5 U.S. 137, 163 ("The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury") to *Lopez v. Candaele* (9th Cir. 2010) __ F.3d __, 2010 DJDAR 14695. (See also *Baker v. Carr* (1962) 369 U.S. 186, 208 [requiring a legally cognizable interest for appellate standing].) In reviewing the necessity and tangibility of the injury required for appellate standing, the United States Supreme Court opined that the injury inquiry includes, "Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?" (*Allen v. Wright* (1984) 468 U.S. 737, 752.)

i. Fifth District Court of Appeal requires actual injury to establish standing.

In applying these well established standing principles the Court of Appeals for the Fifth Appellate District in the present case used a two-part test to determine that the father was not aggrieved by the Juvenile Court's order denying placement of the child K.C. with his grandparents. First, the court examined whether the father had a legally cognizable interest in the child's placement. (*In re K.C.* at 125-6; Slip Opn., pp. 5-6.) Second, the court examined whether the father's interest was injuriously affected by the Juvenile Court's decision. (*In re K.C.* at 126-8; Slip Opn., pp. 7-10.) Focusing on the required injury the court stated, "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 re K.C.* at 128; Slip Opn., p. 10 [emphasis added].)

Appellant has not identified any direct injury to his parental relationship with K.C. resulting from the denial of the paternal grandparents' placement request. In applying the actual injury requirement to the case, it is clear that Appellant has not suffered actual harm and has not proven that he will suffer actual harm in the immediate future as a result of the placement decision. At the time of the hearing on the paternal grandparents' Section 388 petition, Appellant was not receiving reunification services, had not contacted the Agency to inquire about K.C. or schedule visits with K.C., and did not have a relationship with K.C. As the Fifth District reasoned, the Juvenile Court's placement ruling did not "preclude father from pursuing relief under section 388 to set aside the permanency planning hearing and attempt reunification," 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.[C.]," nor "prevent the court at that stage from proceeding with its section 366.26 hearing, finding the child adoptable and terminating parental rights." (*In re K.C.* at 125; Slip Opn., p. 7.) Also, the "father confuses his fundamental interest, which would have been extinguished in any event, with the possibility he might visit K.[C.] at some future point if the grandparents saw fit. In an ironic twist, father also ignores his own conduct, in having seen K.[C.] only once in the child's life and failing to ever visit the child after dependency proceedings were initiated." (*In re K.C.* at 128; Slip Opn., p. 10.)

The Fourth District Court of Appeals, Division Three, also denied a parent who was not receiving reunification services standing to appeal the Juvenile Court's denial of relative placement in *In re Cesar V.* (2001) 91 Cal.App.4th 1023. In *Cesar V.* both the father and paternal grandmother sought extraordinary review of the Juvenile Court order denying placement of the children with the paternal grandmother. (*Id.* at 1026.) Placement was challenged on the eve of the Section 366.26 hearing by the grandmother and the father who also filed a Section 388 petition. (*Id.* at 1028, 1030.) The *Cesar V.* Court held 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, determined that the placement issue was properly before the Court, because the paternal grandmother had also sought extraordinary review from the order denying her placement of the children. (*Id.* at 1034-35.)

ii. Relaxing the "aggrieved" element of standing to allow speculative future harm negates the standing doctrine.

Contrary to the Fifth District and the Fourth District, Division Three, the Fourth District, Division One, enumerated a relaxed standard for assessing a parent's injury when relative placement is denied after family reunification services have been terminated. (See *In re Esperanza C.* (2008) 165 Cal.App.4th 1042.) The *Esperanza C.* Court held that a mother and child who each filed Section 388 petitions regarding placement had standing to challenge the agency's placement decision. (*Id.*) Both Section 388 petitions requested that the child be placed with a great-uncle who had been denied placement based on an alleged nonexemptible violation of Penal Code section 272 for supplying his 17 year old brother and friends with alcohol when he was 21 years old, almost thirty years prior to the dependency proceedings. (*Id.* at 1050-51.) In determining that the mother and child had standing to appeal the denial of their Section 388 petitions, the Court noted that 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 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." (*Id.* at 1053-54 [emphasis added and citations omitted].)

The holding in *Esperanza C.* relaxes the standing requirement to such an extent that it ceases to be a requirement, thus negating the well established appellate principle of an aggrieved party. This opens the proverbial flood gates to appeal any error regardless of personal impact of the judgment. Furthermore, the holding in *Esperanza C.* should be limited because it dealt with an error of law, as the relative was erroneously denied

placement based on the agency's classification of the relative's criminal conviction as nonexemptible under Section 361.4. (*Id.* at 1053.) Moreover, both the parent and the child filed petitions with the Juvenile Court and sought appellate review of the placement decision. Therefore, irrespective of the issue of the parent's appellate standing, the case was properly before the court as a result of the child's appeal.

In support of this relaxed standard for appellate standing Appellant cites the case of *Guardianship of Pankey* (1974) 38 Cal.App.3d 919, for the proposition that any person showing up in court has the right to appeal. (Appellant's Opening Brief on the Merits, p. 23.) The *Pankey* Court held "[o]nce the right to appear is established, the right to appeal an adverse decision should follow. 'The right of appeal should be recognized unless the statute provides otherwise, and it should not be denied upon technical grounds if the appellant is acting in good faith.'" (*Id.* at 927 [quoting *Greif v. Dullea* (1944) 66 Cal.App.2d 986, 993].) The *Pankey* case is distinguishable from Appellant's argument for several reasons. First, the *Pankey* Court allowed a grandmother who was a party of record, as an objector in the guardianship proceedings, to appeal the denial of her objections which she litigated before the Probate Court. (*Id.* at 925-27.) The grandmother had a legal right to object based on the Probate Code and was aggrieved by the Probate Court's denial of her objections. (*Id.* at 927.) However, the First District held that she could not appeal the sufficiency of the father's notice of the guardianship proceedings. (*Id.* at 938.) Additionally, the issue for appellate jurisdiction in *Greif*, the case that *Pankey* relied on in reaching its holding, revolved around the definition of "a party" not around whether there was an injury to fulfill the aggrieved requirement for standing. Second, the *Pankey* case arose in the context of a probate guardianship not in the context of a juvenile dependency case. The case of *In re Angel S.* (2007) 156 Cal.App.4th 1202, 1210, which was in a

dependency context, limited the *Pankey* holding to the Probate Code and determined that a person who is not aggrieved lacks standing to appeal. The *Angel S.* Court affirmed that the injury requirement is an essential element of the standing doctrine by denying appellate standing to a party seeking to appeal the lack of notice to another party. Third, applying the *Pankey* holding, Appellant still fails to have standing because he did not meet the statutory requirements for standing in Code of Civil Procedure section 902, he did not have an absolute right as an incarcerated parent to be transported to the Section 388 hearing even though he was present, and he cannot appeal on the paternal grandparents' behalf. (Cal. Pen. Code, § 2625 subds. (d)-(e).)

Other cases that have adopted a relaxed standing standard still require a legally cognizable injury. (See, e.g., *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993 [plaintiff lacked standing under Government Code section 11135 because he was not personally aggrieved]; *Residents of Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 128 [relaxed standing rules for matters involving the public interest still require the public to be aggrieved].) The denial of appellate jurisdiction also results using the "relaxed standing analysis" that governs challenges to the First Amendment of the United States Constitution. (*Lopez v. Candaele* (9th Cir. 2010) __ F.3d __, 2010 DJDAR 14695.) The federal courts have loosened the standing standard for challenges to the First Amendment to provide a greater opportunity to appeal so as to protect the rights to speech granted by the United States Constitution. The court in *Lopez* stated that the "irreducible constitutional minimum of standing consist[s] of three elements: injury in fact, causation, and a likelihood that a favorable decision will redress the plaintiff's alleged injury." (*Id.* [citations omitted].) Although the court relaxed the standing standard, the plaintiff was still required to prove "injury in fact." (*Id.* at

14698.) "[P]laintiffs must still show an actual or imminent injury to a legally protected interest. ... The touchstone for determining injury in fact is whether the plaintiff has suffered an injury or threat of injury that is credible, not 'imaginary or speculative.'" (*Id.* [citations and quotation omitted].) Although challenges to the First Amendment of the United States Constitution invoke federal jurisdiction, the *Lopez* case shows how a well established relaxed standing standard still recognizes the importance of injury and preserves the requirement.

iii. Joining in an argument does not create standing.

A "parent is precluded from raising issues on appeal which [do] not affect his or her own rights." (*In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1806 [citations omitted].) An appellant must demonstrate that his or her interests are affected by the Juvenile Court's ruling, not someone else's interests, in order to have standing to appeal. (*In re Crystal J.* (2001) 92 Cal.App.4th 186, 189.) Taking a position on a matter before the Juvenile Court does not grant a party standing to appeal an adverse decision on that position. (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703; *In re Carissa G.*, *supra*, 76 Cal.App.4th at 736.) "Standing to challenge an adverse ruling is not established merely because a parent takes a position on an issue that affects the minor; nor can a parent raise the minor's best interest as a basis for standing. Without a showing that a parent's personal rights are affected by a ruling, the parent does not establish standing." (*In re D.S.* (2007) 156 Cal.App.4th 671, 674 [citations omitted]; See also *In re Nachelle S.* (1996) 41 Cal.App.4th 1557, 1562 [a parent cannot appeal solely based on the affect to the child's best interest as allowing such appeals would eviscerate the aggrieved requirement of the standing doctrine].)

The interests of siblings or other relatives in their relationship with a dependent of the court are separate from that of the parent. (*In re Frank L.*,

supra, 81 Cal.App.4th at 703.) Therefore, the parent lacks standing to raise such issues because the parent is not an "aggrieved party." (*Id.*) For example, a parent is not aggrieved by the severing of a grandparent's ties to a dependent child upon termination of parental rights. (*In re Gary P.* (1995) 40 Cal.App.4th 875.) The court in *Gary P.* denied a parent standing to challenge the termination of a grandparent's relationship with a child upon the termination of parental rights. (*Id.*) The court reasoned that the parent was not aggrieved by the cessation of the grandparent's relationship and that the grandparent had "no absolute right to custody of their grandchildren." (*Id.* at 877.) Similarly, the court in *Devin M.* denied a parent standing to appeal termination of parental rights on the grounds that the child and foster parent enjoyed a "mutual parent-child bond" and thus the child should not have been removed from the foster parent in favor of an adoptive placement. (*In re Devin M.* (1997) 58 Cal.App.4th 1538, 1540.) A parent has also been denied standing to challenge a child's placement or raise ineffective assistance of counsel by the child's attorney when appealing from a Section 366.26 hearing. (*In re Frank L.*, *supra*, 81 Cal.App.4th at 703.) Furthermore, a parent cannot appeal issues that affect another parent such as reunification services, hearing notices, and the dismissal of a dependency petition when that parent is not entitled to custody. (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1503-4 (overruled in part on other grounds by *In re Chantel S.* (1996) 13 Cal.4th 196) [mother lacks standing to appeal order requiring father to participate in counseling services]; *In re Jenelle C.* (1987) 197 Cal.App.3d 813, 818 [mother lacks standing to appeal defective service of notice to father]; *In re Tomi C.* (1990) 218 Cal.App.3d 694 [father lacks standing to appeal from dismissal of a dependency petition].)

In the present case, the two parties directly affected by the placement ruling were the child K.C. and the paternal grandparents. Therefore, K.C.

and the paternal grandparents each had an interest arguably vulnerable to harm in the Section 388 hearing. Appellant lacks standing to raise issues affecting only K.C. and the paternal grandparents. Foreclosing appeal to Appellant does not foreclose review of the Juvenile Court's decision. The paternal grandparents could have appealed the denial of their request for placement and enjoyed appellate review if their appeal was timely filed. (See, e.g., *In re Cesar V.* (2001) 91 Cal.App.4th 1023, 1035; *In re Aaron R.* (2005) 130 Cal.App.4th 697, 703.) Additionally, the child K.C., if in favor of being placed with the paternal grandparents, could have appealed the placement decision.[7] (See generally *In re Daniel H.* (2002) 99 Cal.App.4th 804, 811 (citing *In re Elizabeth M.* (1991) 232 Cal.App.3d 553) [a child's right to appeal].) In determining that a grandmother had standing under Section 366.26, subdivision (k), to appeal the denial of her Section 388 petition requesting placement, the court in *Aaron R.* reasoned that "[w]hether a child is in the custody of a foster parent or relative during the dependency proceedings has no bearing on the issue of the parent's reunification rights or other parental rights." (*In re Aaron R.*, *supra*, 130 Cal.App.4th at 703.) The *Aaron R.* Court held that changing the child's placement "could not affect the order terminating the mother's reunification rights and setting a permanency hearing or the outcome of the permanency hearing itself," negating any appellate rights. (*Id.*)

c. A child's interest in placement becomes greater than that of a parent after family reunification services are terminated.

"For purposes of appellate standing in dependency cases, a parent is aggrieved by a juvenile court order that injuriously affects the parent-child relationship." (*In re Paul W.* (2007) 151 Cal.App.4th 37, 62.) A parent and

[7] Please note that K.C.'s attorney argued against placement with the paternal grandparents. (8 RT 1100-1103.)

a child each have fundamental rights based on their separate interests. A parent's interest in their child is for companionship, care, custody and management. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307; *In re Kieshia E.* (1993) 6 Cal.4th 68, 76; See generally *Stanley v. Illinois* (1972) 405 U.S. 645, 651.) A parent's interest in the dependency proceedings is to reunify with their dependent child. (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1835; *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.) A child's interest is in belonging to a family unit, being protected from abuse and neglect, and enjoying a stable, permanent home. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419; *Adoption of Kay C.* (1991) 228 Cal.App.3d 741, 749.) "[T]he interests of the parent and the dependent child do not always intertwine. Instead, as our law has progressed it has recognized that children have separate rights and interests that may differ from those of the parent, particularly once reunification efforts have been denied or terminated." (Seiser & Kumil (2010) *California Juvenile Courts Practice and Procedure,* § 2.62[3][b][iii].) "The rights of children transcend the biological parent-child relationship." (34 *Cal. Forms of Pleading and Practice* § 394.11 (Matthew Bender, 2010).) They are "not simply chattels belonging to the parent, but have fundamental interests of their own that may diverge from the interests of the parent." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419 [citation omitted].)

As dependency proceedings progress and the parent fails to reunify with the child, the child's interest in a safe, stable, permanent placement grows stronger than the parent's interest in regaining custody of the child. The court in *In re Arturo A.* (1992) 8 Cal.App.4th 229, 242 fn.6, adopted the idea that a child has a "constitutional right to a reasonably directed early life, unmarred by unnecessary and excessive shifts in custody." (See also *In re Marilyn H.* (1993) 5 Cal.4th 295 [recognizing a child's constitutional right to a safe and stable home].) Although the court did not articulate

when the child acquires their constitutional rights, the court did opine "that at some point in the administrative process of terminating parental rights and creating new lives for dependent children, the due process rights of the delinquent parent may be neutralized by the competing liberty interests of the child in finalizing the child's permanent life planning." (*In re Arturo A.*, *supra*, 8 Cal.App.4th at 242 fn.6.) The court in *In re H.G.* (2006) 146 Cal.App.4th 1, stated that a parent maintains an interest in a child until parental rights are terminated. However, the parent's interest in the child exponentially decreases after termination of reunification services until the Section 366.26 hearing recommending adoption as the appropriate permanent plan for the child terminates all rights and legal interests of the parent in the child. "Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability." (*In re Celine R.* (2003) 31 Cal.4th 45, 52 [quoting *In re Marilyn H., supra*, 5 Cal.4th at 309].) The Court in *Marilyn H.* recognized that a child has a compelling right "to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child." (*In re Marilyn H.*, *supra*, 5 Cal.4th at 306.)

To support the parent's retention of a fundamental interest in the child until termination of parental rights, the court in *H.G.* relied on four sections of the Welfare and Institutions Code—361.3, 388, 366.21, 387. (*In re H.G.* (2006) 146 Cal.App.4th 1, 9-10.) First, the court considered Section 361.3, subdivision (a)(2), which allows the court to consider a parent's wishes regarding placement of a child with a relative. (*Id.* at 9.) However, Section 361.3, subdivision (a)(2), allows the court to consider several individuals' opinions regarding placement of the child, including a parent, and only to the extent consideration of such opinions is appropriate. Second, the court considered Section 388, which allows a parent to petition the court for return of the child upon a showing of changed circumstances

and promotion of the child's best interests by the request. (*Id.*) A placement decision has no effect on a parent's ability and right to file a Section 388 petition. Third, the court considered Section 366.21, subdivision (h), which allows a parent to continue visiting the child after the termination of reunification services if visitation is not detrimental to the child. (*Id.*) A placement decision in general would not interfere with a parent's limited right to visitation with the child after termination of reunification services. Moreover, in the present case, the placement decision did not interfere with Appellant's right to visit K.C., which he never exercised. Fourth, the court considered Section 387 regarding the possibility of placement to alter the best interest of the child and to determine an appropriate permanent plan for the child. (*Id.* at 9-10.) Placement decisions take into consideration the best interest of the child. In fact, this is the linchpin of relative placement review pursuant to Section 361.3. Additionally, placement decisions would not foreclose a parent from presenting evidence of the application of a Section 366.26 exception to adoption as the preferred permanent plan, or consideration of another permanent plan, for the child. In the present case, adoption was the appropriate permanent plan for the infant K.C. and all parties interested in placement were interested in adoption. Furthermore, Appellant did not challenge the termination of his parental rights on substantive grounds. Therefore, while a parent may continue to have a residual interest in the child after termination of reunification services, the parent's actual interests at this stage of the proceedings have been vastly reduced.

To the extent the parent and the child's interests intertwine then either party "has standing to litigate issues that have a[n] impact upon the related interests." (*In re Patricia E.* (1985) 174 Cal.App.3d 1, 6 [overruled on other grounds by *In re Celine R.* (2003) 31 Cal.4th 45].) "In the absence of such intertwined interests, 'a parent is precluded from raising issues on

appeal which did not affect his or her own rights.'" (*In re Paul W.* (2007) 151 Cal.App.4th 37, 46 [quoting *In re Caitlin B.* (2000) 78 Cal.App.4th 1190, 1193].) A parent appealing a ruling of the Juvenile Court is required to show that he/she has an interest that is injuriously affected by the ruling. The court in *In re Valerie A.* (2007) 152 Cal.App.4th 987, held that a mother did not have standing to appeal the denial of her motion to appoint a guardian ad litem for the child. The court concluded that the mother did not "show more than a nominal interest in the consequence of the court's denial of her motion. Any prejudicial effect on [the mother's] interest in proceedings is merely speculative." (*In re Valerie A.*, *supra*, 152 Cal.App.4th at 1000.) Similarly, in denying the mother standing to appeal the issue of sibling visitation the court in *In re Daniel H.* (2002) 99 Cal.App.4th 804, 811, rejected the mother's argument that her interests were "significantly intertwined" with her children. The court stated "[t]hat link is far too tenuous to support standing. Just because the mother still has rights in relation to her daughters that does not give her standing to appeal every ruling that involves her daughters without some showing that her personal interests were affected." (*Id.*; See also *In re Frank L., supra*, 81 Cal.App.4th at 703 [that a parent and child's interest may be intertwined does not create standing].)

A parent does not have standing to raise all issues arising in the juvenile dependency context that affect the interest of their child. The appellate courts have denied a parent standing to raise issues such as sibling visitation, conflicts of interest of minor's counsel, the agency's provision of adequate services to the minor, psychological evaluations for the minor, etc. (See, e.g., *In re Holly B.* (2009) 172 Cal.App.4th 1261, 1266.) 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 appeal the denial of defacto status to his relatives]; *In re Gary P.* (1995) 40 Cal.App.4th 875, 876-77; *In re Cesar V., supra,* 91 Cal.App.4th at 1035.)

Although a parent's interest in his or her child's companionship, care, custody, and management is ranked among the most basic of civil rights, Appellant's interest that might be affected by the change in placement was insignificant. The father's interest in K.C.'s care, companionship, custody, and management had already been severely restricted. His custody rights had been taken away, he was never offered reunification services, his visitation rights were limited and unutilized, and he had no practical or psychological relationship with K.C. Though Section 361.3, subdivision (a)(2), required that the Agency consider the father's wishes regarding K.C.'s placement with a relative to the extent appropriate, his wishes were only one of many factors that the Agency was required to consider in determining K.C.'s best interests. Since Appellant's interest in K.C.'s placement was minimal, this factor weighs against the father being considered an aggrieved party based on the placement decision. Finally as the Fifth District stated "K.[C.]'s placement at this late stage of the dependency proceedings had no bearing on father's interest." (*In re K.C.* at 125; Slip Opn., p. 7 [citations omitted].)

Reviewing a father's standing through the progression of a juvenile dependency case highlights how his interest and rights diminish when he is unsuccessful in reunifying with his child and fails to nurture his relationship with his child. First, a father's classification in the dependency proceedings determines his standing: presumed (has standing under Section 395 and Code of Civil Procedure section 902 if an aggrieved party), *Kelsey*

S.[8] (same standing as presumed father), biological (similar to presumed, but limited based on court's discretion to grant reunification services upon a showing of that services are in the best interest of the child), alleged (only standing to raise paternity status), excluded/non-father (no standing at all). (See *In re Paul H.* (2003) 111 Cal.App.4th 753, 760 [alleged father's right to appeal]; *In re Christopher M.* (2003) 113 Cal.App.4th 155, 160; *In re Joshua R.* (2002) 104 Cal.App.4th 1020, 1029.) Standing in general decreases with the classification of paternity as the interest in the child decreases. Similarly the stage of the dependency proceedings affects both the interest and standing of the father. At the initial stages of a case the goal is on reunification or maintenance of the family unit, thus the interest of the parent in the child is greatest. However, as the case progresses, if the parent is unable to complete services, then the case moves towards the goal of finding a permanent plan for the child, at which point the parent's interest and rights to appeal decline. (See *In re Celine R.*, *supra*, 31 Cal.4th at 52.)

Finally, the State has a significant interest in a dependent child. The "welfare of a child is a compelling state interest that the state has not only a right, but a duty, to protect." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307 [citations omitted].) "Once family reunification is no longer the primary goal, the state interest requires the court to focus on the child's placement and well-being, rather than on the parent's challenge to custody. The focus of dependency proceedings shifts from the parents' interest in reunification to the child's interest in permanency and stability." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 223 [citations omitted].) Therefore, "[b]y the time a permanency hearing has been set, the child's private interest in a safe, permanent placement *outweighs* the parent's interest in preserving a

[8] *Adoption of Kelsey S.* (1992) 1 Cal.4th 816.

tenuous relationship with the child." (*Id.* [emphasis added, citing *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575].) Although the Court *In re Celine R.* (2003) 31 Cal.4th 45, 52 fn. 2, 59, did not address standing, the Court did note the importance of determining a permanent plan for a dependent child whose parents are not receiving reunification services "reasonably promptly to minimize the time during which the child is in legal limbo." Accordingly, Appellant lacks standing to challenge placement or custody of K.C. after his reunification services have terminated as both the child and the State's interest supersede any residual interest the father may have in K.C.

d. Requiring actual injury protects the integrity of the appellate process, the importance of the child in dependency proceedings and the need for promptly stabilizing a child's placement when family reunification is not possible.

"The purpose of a standing requirement is to ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439; See also *In re Jasmine S.* (2007) 153 Cal.App.4th 835, 842.) The Court of Appeals for the Fifth Appellate District in the present case held that a parent must suffer injury to have appellate standing and the possibility that a parent might suffer injury in the future was insufficient to create appellate standing. Requiring a party to suffer an actual injury protects the appellate process by limiting the court's workload to appropriate cases and insuring the parties briefing the cases have an actual interest in the issues increasing the quality of appellate work and insuring that dependency cases are expedited. (See *Estate of Partridge* (1968) 261 Cal.App.2d 58, 64 [if "all creditors and possible creditors were to have the right to appeal from a probate order without appearing or participating in the probate court

proceeding in which the order is made, practical expeditious administration of estates would not be possible"].) As "[c]hildhood does not wait for a parent to become adequate" time is an important consideration in dependency cases. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310; See also *In re Phoenix H.* (2009) 47 Cal.4th 835, 842.)

II. THE RELATIVE PLACEMENT PREFERENCE DOES NOT CONFER STANDING TO A PARENT TO APPEAL PLACEMENT DECISIONS.

Welfare and Institutions Code section 361.3 creates a preference for placement of a dependent child with a relative, but does not guarantee placement. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798 [citations omitted].) In other words, the relative placement preference does not presume or require actual placement of the child with the relative. Instead, it merely requires that relatives be considered for placement and that a determination be made as to whether the relative's home is appropriate based on a consideration of the suitability of the home and the child's best interest. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320-21.) The Agency fulfilled its obligation to assess K.C.'s grandparents and based on numerous factors in Section 361.3 the Court denied placement. Because Section 361.3 merely creates a presumption favoring placement it does not create independent appellate rights for a parent who disagrees with the placement of their child.

Although relative placement is an amendable goal of dependency to protect the relationship of the children to their community and their heritage, to support the nuclear family and facilitate reunification, and to reduce the fiscal impact of foster care placements, it is not always feasible or in the best interest of the child. (See *In re Joseph T.*, *supra*, 163 Cal.App.4th at 797; Cal. Welf. & Inst. Code, § 362.7 [similar rational used to expedite placement requests of non-related extended family members];

Cal. Welf. & Inst. Code, §§ 16501 subd. (a), 16010.4 subd. (a) [referencing a 35% relative placement rate in California].) Therefore, when a relative requests placement of a child who is a dependent of the Juvenile Court, the Agency must proceed with a two-step analysis of the relative. First, the relative is assessed for licensing purposes pursuant to Sections 309 and 361.4. This assessment includes a criminal background check on all adults living in the home or providing care for the child, a home inspection to ensure compliance with the applicable health and safety standards, and a check of the Child Abuse Central Index. (Cal. Welf. & Inst. Code, § 361.4 subds. (a)-(c).) Second, a potential relative placement is assessed for the best interests of the child pursuant to Section 361.3. (See Cal. Welf. & Inst. Code, § 361.3 subds. (a)(1)-(8); *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1068 [the child's best interest is the "linchpin" of analysis under Section 361.3].) Section 361.3 provides eight factors to be considered in evaluating a potential relative placement including the "best interest of the child," the "wishes of the parent, the relative, and the child, *if appropriate*," the "good moral character of the relative and any other adult living in the home," the "nature and duration of the relationship between the child and the relative," the relative's ability to "provide a safe, secure, and stable environment for the child" and "facilitate court-ordered reunification efforts with the parents." (Cal. Welf. & Inst. Code, § 361.3 subds. (a)(1), (2)[emphasis added], (5), (6), and (7)(A), (E).)

a. Section 361.3 creates a preference for placement of a dependent with a relative not a mandate for placement.

A relative seeking placement is entitled to be the first placement to be considered and investigated, not a presumption of placement. (Cal. Welf. & Inst. Code, § 361.3 subd. (c)(1); *In re Andrea G.* (1990) 221 Cal.App.3d 547, 556.) The preference for relative placement dissipates when a new placement is not needed. (*In re Lauren R.* (2007) 148

Cal.App.4th 841, 853.) In evaluating a relative placement the Juvenile Court shall "determine whether such a placement is *appropriate*, taking into account the suitability of the relative's home and the best interest of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321 [emphasis in original].) The court shall use its independent evaluation of the evidence in making its determination.

In the present case, the paternal grandparents were assessed by the Agency for placement of K.C. The paternal grandparents' home was deemed to meet the licensing standards, although there were concerns about the availability of space in the home for K.C. after infancy. (See Cal. Code Regs. tit. 22, § 89387 subds. (a)(1), (8)(A).) The placement was denied by the Agency because it failed to meet the best interest of the child pursuant to Section 361.3.

The Juvenile Court's ruling and the Agency's decision denying the paternal grandparents' placement request included several reasons in accord with Section 361.3 as to why placement was not in K.C.'s best interest. First, the paternal grandparents delayed in and failed to establish a relationship with K.C. as they failed to schedule visits with K.C. Second, at the time of the Section 388 hearing, the paternal grandparents were providing care and seeking to adopt five young children, all of whom suffered from emotional or behavioral problems including post traumatic stress disorder, dysthymic disorder, and attachment disorder, thus failing Section 361.3, subdivision (a)(4). Also, the lack of a bond between K.C. and his siblings, the jealously issues, and siblings' mental health issues did not make preservation of the sibling group in K.C.'s best interest. Third, the paternal grandparents were not forthcoming with providing information to the Agency and provided inconsistent information. Fourth, the paternal grandparents' failure to seek mental health treatment and to follow therapists' recommendations for the children in their care showed their

inability to provide a safe, secure and stable environment for K.C., contrary to Section 361.3, subdivision (a)(7)(A). Fifth, the paternal grandparents' facilitated the parents alcohol and drug use by continuing to proffer financial support and were not able to show that they would protect K.C. from his biological parents.

In reviewing the factors in Section 361.3, the father argues that merely indicating his wishes regarding K.C.'s placement confers appellate rights. (Appellant's Opening Brief on the Merits, pp. 23, 31.) Section 361.3, subdivision (a)(2), does not create a statutory right for a parent to appeal a placement decision. First, subdivision (a)(2) requires consideration of numerous perspectives on placement to the extent they are appropriate. To allow a parent to have standing based on stating a placement preference would negate the standing requirement. (See *In re D.S.* (2007) 156 Cal.App.4th 671, 674 [merely taking a position on an issue does not confer standing].) Numerous individuals provide opinions in the dependency context as the goal of dependency proceedings is to provide the Juvenile Court with the most information possible so that it can make informed decisions regarding the child. (Cal. Welf. & Inst. Code, §§ 350 subd. (a)(1), 369.5, 361; Cal. Rules of Court, rule 5.650, 5.640 [e.g. educational and medical decisions].) If every person providing an opinion or taking a position regarding the best interest of the child was allowed to appeal, the results would be untenable, as contemplated in context of negligence in *Palsgraf v. Long Island Railroad Co.* (1928) 248 N.Y. 339. In *Palsgraf* the court limited liability for negligent acts based on the concept of proximate cause, holding that an injury too far attenuated from the duty of care was beyond the scope of recovery. Similarly, standing should be limited to actual injury. Limiting appeals to the party directly affect by the court's ruling prevents the standing doctrine from becoming too attenuated allowing anyone with any connection, regardless of how

remote, to appeal. Second, to the extent Section 361.3 creates a right to appeal, that right is vested in the relative seeking placement. (See *In re Harmony B.* (2005) 125 Cal.App.4th 831, 838 [citing *In re Cesar V.* (2001) 91 Cal.App.4th 1023, 1034].) Third, not all the factors in Section 361.3 are relevant to every dependency case. For example, Section 361.3, subdivision (a)(7)(E), considers placement in terms of facilitating family reunification. Here however, reunification services were bypassed for K.C.'s father. Although the father's wishes regarding placement were considered by the court, the appropriateness of an opinion of a man who did not have a relationship with the child as he never called, wrote, sent gifts, inquired of the child's well-being or requested visits after dependency proceedings initiated is questionable.

In support of his argument that preservation of the biological family creates standing, Appellant cites the United States Supreme Court case of *Moore v. East Cleveland* (1977) 431 U.S. 494. (Appellant's Opening Brief on the Merits, p. 33.) The Court in *Moore* overruled a municipal zoning ordinance limiting the number of children in a home by its definition of family. The *Moore* decision has been distinguished by cases in the juvenile dependency context. (See *In re Gary P.* (1995) 40 Cal.App.4th 875, 877; *In re Jasmine T.* (1999) 73 Cal.App.4th 209, 214.) First, "[n]othing in the [*Moore*] opinion grants standing to a person not affected by the result." (*In re Gary P., supra*, 40 Cal.App.4th at 877.) Second, the "overriding concern of dependency proceedings ... is not the interest of extended family members, but the interest of the child." (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855.) Third, a parent is not aggrieved, and therefore cannot appeal the interest of a relative in their relationship with the dependent. Furthermore, once reunification services are terminated preservation of the family is no longer a goal of the dependency proceedings. (*In re Jasmine T.* (1999) 73 Cal.App.4th 209, 213.)

b. The goal of dependency proceedings is not to change a parent's relationship with the child to that of a sibling.

"The purpose of the dependency process is to protect abused or neglected children and those who are at risk of such abuse and neglect and to provide stable, permanent homes to those children if they cannot be returned to their home within a limited period of time." (Seiser & Kumil (2010) *California Juvenile Courts Practice and Procedure,* § 2.62[2]; See also *Id.* at § 2.11; Cal. Welf. & Inst. Code, §§ 202, 16000 subd. (a).) A child comes under the jurisdiction of the Juvenile Court based on the provisions of Section 300 due to the risk of harm the child's parent presents to the child's well-being. Throughout the dependency proceedings the Juvenile Court makes several findings regarding a parent: when a child is removed from a parent's home, the court finds that the parent is unable to provide for the safety of the child; when reunification services are terminated, the court finds that the parent has not made substantial progress in ameliorating the conditions that led to the initial removal of the child and return of the child to the parent would be detrimental; and when reunification services are bypassed for a parent, the court finds that reunification services are not in the best interest of the child and one or more of the statutory exceptions to the provision of services applies. (Cal. Welf. & Inst. Code, §§ 361 subd. (c), 366.21 subd. (e), 361.5 subds. (b)-(c).) Contrarily, when parental rights are terminated, the court finds that the child is adoptable. (Cal. Welf. & Inst. Code, § 366.26.) Thus, while dependency proceedings are not criminal prosecutions of a parent, they do focus on the parent and the harm the parent presents to the child until the Section 366.26 hearing when the focus shifts primarily to the child. "At the permanency planning hearing, '... the goal of the proceedings changes from

reunifying the family to locating a permanent home for the child *apart from the parent.*'" (*In re Jason E.* (1997) 53 Cal.App.4th 1540, 1548 [quotation omitted, emphasis added].)

Appellant argues that if his parents, K.C.'s grandparents, were allowed to adopt K.C., he would become the child's legal brother and then be entitled to a relationship and visitation with the child. (Appellant's Opening Brief on the Merits, pp. 28-30.) This presumption is not applicable to a relative adoption through juvenile dependency proceedings for numerous reasons. First, "[i]n the dependency context, even with a kinship adoption, the adoptive parents may decide that the birth parent cannot maintain contact with the child." (*In re Jasmine T.* (1999) 73 Cal.App.4th 209, 213 fn.5 [citations omitted].) The court in *Jasmine T.* went on to state that "[p]lacement with a relative is not tantamount to family preservation. ... Family preservation ceases to be of overriding concern if a dependent child cannot be safely returned to *parental custody* and the juvenile court terminates reunification services." (*Id.* at 213 [citations omitted, emphasis in original].) Second, a parent whose parental rights have been terminated cannot petition the court after termination for visitation. (*In re Jacob E.* (2004) 121 Cal.App.4th 909, 925; *Amber R. v. Superior Court* (2006) 139 Cal.App.4th 897.) Third, the Family Code outlines the process for entering post-adoptive contact contracts, even in relative adoption proceedings, that delineate the terms of the birth parents contact with the child. (Cal. Fam. Code, §§ 8616.5, 8714.5 subd. (b).) Without a post-adoptive contact contract, a parent whose rights have been terminated has no right to visit with or contact the child.

Fourth, Appellant's argument is contrary to the goal of juvenile dependency proceedings to protect the child from persons such as the

parent with whom detriment has been established. The goal of dependency is to protect the child which requires finding the child a safe, permanent placement. To facilitate this goal potential placements are assessed not only for their structural security, but to ensure that they will provide relational security, protecting the child from their parent and other potentially harmful persons. (Cal. Welf. & Inst., § 361.4 subd. (b) [requiring every "person over 18 years of age ... who may have significant contact with the child, including any person having a familial or intimate relationship with any person living in the home" to complete a background check].) Additionally, the New York case cited by Appellant allowing a child's ex-mother standing to seek visitation after termination of her parental rights is not persuasive as the case did not originate in the juvenile dependency context and the ex-mother continued to reside with the child for years after termination of her rights. (*Jeanette H. v. Angelo V.* (1990) 562 N.Y.S.2d 368; Appellant's Opening Brief on the Merits, pp. 28-9.) Regardless, *Jeanette H.* is not controlling authority. (See *In re Jacob E.*, *supra*, 121 Cal.App.4th 909 [California case holding termination of parental rights means termination of visitation and the right to petition the court for visitation].) Finally, Appellant's argument is contrary to the established principles of standing which required certain direct harm, not harm "contingent upon future happenings." (*Radunich v. Basso* (1965) 235 Cal.App.2d 826, 830 [holding a surety was not aggrieved, pursuant to Code of Civil Procedure section 938, and lacked standing to appeal].) A possible future relationship contingent upon the paternal grandparents' death and upon the discretion of the court to order visits or upon the paternal grandparents' failure to care for K.C. resulting in his return to the juvenile dependency system is far too tenuous to support appellate standing.

(Appellant's Opening Brief on the Merits, pp. 28-9 [citing Cal. Fam. Code, § 3102 subd. (a)].)

CONCLUSION

The Fifth District correctly applied the well established rules of standing when holding that Appellant did not have standing to contest the denial of the paternal grandparents' Section 388 request for placement of the child K.C. Continuing to require an immediate, substantial interest injuriously affected protects the integrity of the standing requirement. For all these reasons, Respondent respectfully requests that this Court affirm the Court of Appeal's decision that Appellant lacks standing.

Dated: November 9, 2010

Respectfully submitted,

COLLEEN CARLSON
County Counsel

By Johannah L. Hartley
JOHANNAH L. 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 I prepared the foregoing petition, and that the word count for this **RESPONDENT'S ANSWER BRIEF ON THE MERITS** is 13,373 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: November 1, 2010

Respectfully submitted,

COLLEEN CARLSON
County Counsel

By Johannah L Hartley
JOHANNAH L. HARTLEY
Deputy County Counsel

h/300brief/S183320-WrdCt-jh- 2010

PROOF OF SERVICE BY MAIL and PERSONAL DELIVERY
(CCP 1013a, 2015.5)

I declare that I am employed in the County of Kings, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 1400 West Lacey Blvd., Hanford, CA 93230.

I am familiar with this firm's practice whereby the mail after being placed in a designated area is given the appropriate postage and is deposited in an appropriate mailbox in the County of Kings, California. On November 10, 2010, I served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS,** by placing a true copy thereof enclosed in a sealed envelope in the designated area for outgoing mail addressed as set forth below:

Honorable George Orndoff
Kings County Juvenile Court
1426 South Drive
Hanford, CA 93230
(Interoffice Mail)

Central California Appellate Program
2407 J. Street, Suite 301
Sacramento, CA 95816

Petitioner's Counsel
Monica Vogelmann
P.O. Box 1034
Cooperstown, NY 13326
(Clients Copy On
Behalf of Attorney)

Clerk of the Court
Court of Appeal
Fifth Appellate District
State of California
2424 Ventura Street
Fresno, CA 93721-2227

I personally delivered a true copy of the **RESPONDENT'S ANSWER BRIEF ON THE MERITS** by placing a true copy thereof in a sealed envelope to the following person:

COUNSEL FOR K.C.
Minors Advocate
1400 West Lacey Blvd.
Hanford, CA 93230
(Hand-Delivered)

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 10, 2010, at Hanford, California.

MARICELA DE LA ROSA