IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re K. C., A Person Coming Under The Juvenile Court Law.	SUPREME COURT NO. S183-320
KINGS COUNTY DEPARTMENT OF HUMAN SERVICES, Plaintiff and Respondent, v. J.C., Defendant and Appellant.	COURT OF APPEAL NO. F058395 JUVENILE NO. 08JD0075

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

HONORABLE GEORGE L. ORNDOFF, JUDGE

APPELLANT'S REPLY BRIEF ON THE MERITS

MONICA VOGELMANN
California Bar No. 126-462
P.O. Box 1034
Cooperstown, New York 13326
(607) 547-7058
By appointment of the Court of Appeal under the Central California Appellate Program. Independent case system
Attorney for Defendant and Appellant, J. C.

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INTRODUCTION

But for the quirk of fate, young K.C. would be placed with his five full-blooded brothers in the home of his paternal grandparents, awaiting adoption. Instead, because his mother briefly resided in Kings County after giving birth to young K.C., he was taken into protective custody by the

Kings County Human Services Agency [Agency] and the integrity of this biological family was rent asunder. It should not be overlooked that the neighboring Tulare County Human Services Agency' s social workers were ready and willing to place K.C. in the grandparents's home, if young K.C. were under the control of the Tulare County Juvenile Court, instead of the Kings County Juvenile Court. (7 R.T. 815, 824-837.) K.C. is now in a non-relative foster home, in which he was placed the day *after* the Agency was notified that the paternal grandparents contested the denial of relative placement. (3 R.T. 304-305; 2 C.T. 548.)

Unfortunately, the legality and merits of the proceedings in this case were never subjected to meaningful appellate review. The California Court of Appeals, Fifth Appellate District [Fifth District] held that J.C. was "not entitled to an on-the-merits review of the trial court's ruling on the relative placement request." (Slip Opn. p. 10.)

Initially, J.C. reaffirms all points of argument contained in Appellant's Opening Brief on the Merits. In this reply, J.C. addresses those points needing response or clarification. Failure to reply to a particular point raised in the Respondent's Answer Brief on the Merits [RABM] is not a concession or waiver of the point. The point was adequately discussed and briefed previously and requires no further

argument.

The Fifth District and the respondent contend that J.C.'s interest in his child is limited to reunification and his legal status as father. (Slip Opn. pp. 7-10; RABM p. 20.) But J.C. replies that his fundamental interest in the "companionship, custody, management and care" of his son is broader than mere reunification in the dependency case.

Respondent also contends that "relaxing the 'aggrieved' element" will somehow negate the standing doctrine. (RAMB p. 21.) But J.C. replies that the Code of Civil Procedure, section 902 is a remedial statute which should be liberally construed in favor of the right to appeal and thus liberal construction should be applied to the definition of "aggrieved."

And lastly, Respondent argues against standing because it contends that the goal of the dependency system is not to change the legal relationship of the parent to that of a sibling. (RAMB pp. 35, 39.) However, this contention is irrelevant to the issue of standing; standing does not flow from being a "goal of dependency system." J.C. argues that he will have another, significant legal relationship with his son, if his parents adopt; instead, if the foster mother adopts- - all practical and legal relationships with his son will be forever severed. This is an injury which confers standing.

ARGUMENT I.

J.C.'S FUNDAMENTAL INTEREST IN THE "COMPANIONSHIP, CUSTODY, MANAGEMENT AND CARE" OF HIS SON IS BROADER THAN MERE REUNIFICATION IN THE DEPENDENCY CASE

The Fifth District and the respondent contend that J.C.'s interest in his child is limited to reunification and the legal status as father. (Slip Opn. pp. 7-10; RABM p. 20.) And since J.C.'s parental rights are terminated under the plan of adoption with the grandparents, as well as the foster parent, the Fifth District reasoned J.C.'s has no cognizable interest in the placement of his son. (Slip Opn. 7, 10.) But J.C. disagrees.

The Fifth District does agree that "a parent retains a fundamental interest in the child's companionship, custody, management and care until parental rights are terminated." (Slip Opn. p. 6.) At the time the section 388 modification petition was litigated, J.C. retained his full parental rights. Surely, no reasonable argument can be made that a father lacks standing in juvenile court to argue that his child should be placed with a relative. In fact, the relative placement preference statute specifically requires the court to consider the "wishes of the parent." (§ 361.3, subd. (a)(2).) The language in the statute commands that the court "shall consider, " not "may

consider."[1] (§ 361.3, subd. (a)(2).) It appears logically inconsistent to bar a parent from challenging the trial court's disregard of the parent's wishes, where the Legislature has explicitly mandated that those exact wishes must considered in the relative placement analysis.

Respondent's argument does have some support, in that a few cases have held that a parent's interest in the dependency process is only reunification. But where does this concept come from? "Standing requirements will vary from statute to statute based upon the intent of the Legislature and the purpose for which the particular statute was enacted." (*Blumenhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000.)

In *Devin M.*, the court stated "That is, a parent's interest is in reunification." (*In re Devin M.* (1997) 58 Cal. App. 4th 1538, 1541.) without any supporting citation. This holding has been repeated. "A parent's interest is in reunification and in maintaining a parent-child relationship." (*In re Holly B.* (2009) 172 Cal. App. 4th 1261, 1266.) But J.C. would counter that the right to "custody," "care" and "management"

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[1] "Shall" is mandatory and "may" is permissive. (Evid. Code § 11; *In re Manzy W.* (1997) 14 Cal.4th 1299, 1204; Cal. Rules of Court, rule 1.5(b)(1)&(2).)

may be extinguished by the termination of parental rights and the subsequent adoption of K.C. But if his parents receive placement and ultimately adopt his son, J.C.'s interest in the "companionship" portion of his fundamental interest in "companionship, custody, management and care" wold remain intact.

But besides the importance to reunification, a parent has a "right to visitation from the fact of parenthood," and such visitation right is a fundamental liberty interest protected by the due process clause. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 50; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756-7.) Further, "visitation may be seen as an element critical to the promotion of the parent's interest in the care and management of their children, even if actual physical custody is not the outcome." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138; *In re Luke L.* (1996) 44 Cal. App. 4th 670, 679.) While J.C. will not have the *legal* right to enforce visitation over the objection of his parents- - he will maintain the practical ability to have a relationship with his son.

In this case, young K.C. has been denied the right to have a relationship with his full, biological brothers and his loving extended family- - due to what J.C. contends, was an arbitrary and wrongfully rendered decision of the juvenile court. Yet the decision will evade

meaningful review, because the grandparents untimely filed their Notice of Appeal, and John has been denied standing to be heard on the merits. (Slip Opn. pp. 4, 10.)

ARGUMENT II.

CODE OF CIVIL PROCEDURE, SECTION 902 IS A REMEDIAL STATUTE WHICH SHOULD BE LIBERALLY CONSTRUED IN FAVOR OF THE RIGHT TO APPEAL AND THUS, LIBERAL CONSTRUCTION SHOULD BE APPLIED TO THE DEFINITION OF "AGGRIEVED."

Respondent contends that "relaxing the 'aggrieved' element" will somehow negate the standing doctrine. But J.C. replies that the Code of Civil Procedure, section 902 is a remedial statute which should be liberally construed in favor of the right to appeal and thus liberal construction should be applied to the definition of "aggrieved." It appears that the definition of "aggrieved" for the purpose of determining standing can be a "moving target" and that the courts are given great latitude in its determination of which appellants may be heard on the merits.

The proper context for this analysis is that "[t]he policy of the law is to recognize a right to review the judgment of a lower court if not prohibited by law." (*Koehn v. State Board of Equalization* (1958) 50 Cal. 2d 432, 435.) Standing " 'goes to the existence of a cause of action" (*Blumenhorst v. Jewish Family Services of Los Angeles* (2005) 126

Cal.App.4th 993, 1000.) "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.)

"The controlling Supreme Court analysis was explained by the Court of Appeal thusly: " '[A]s to the question who is the party aggrieved, the test ... seems to be the most clear and simple that could be conceived. Would the party have had the thing, if the erroneous judgment had not been given? If the answer be yea, then the person is the "party aggrieved." (*United Investors Life Ins. Co. v. Waddell & Reed, Inc.* (2005) 125 Cal. App. 4th 1300, 1305.) Here, J.C. would have the right to have a legal sibling relationship with his son and have the right to see his son- - contingent on his good behavior- - had the court not entered the erroneous judgment. J.C. is aggrieved.

And a hearing on the merits is favored "when such can be accomplished without doing violence to applicable rules. Accordingly in doubtful cases the right to appeal should be granted." (*Lee v. Brown* (1976) 18 Cal.3d 110, 113.) In addition to the factors set forth in Appellant's Opening Brief on the Merits, Family Code section 8714.5, also sets forth

the "applicable rules" and the strong public policy supporting the relative placement preference. It states the intent of the Legislature to, inter alia, "remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system" by empowering "extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships." (Fam. Code § 8714.5, subd. (a)(1)(2).)

To allow a parent to challenge the denial of relative placement requests does no violence to these applicable rules- - in fact it supports the strong legislative presumption that "[p]lacement with a suitable relative is presumptively in the child's best interest. (§§ 309, 319, 361.3, subd. (a), 16000, subd. (a), 16501.1, subd. (c)(1).)" (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1060.)

ARGUMENT III

J.C. WILL RETAIN SIGNIFICANT DE FACT AND DE JURE RELATIONSHIPS WITH HIS SON, UNDER A PLAN OF ADOPTION WITH HIS PARENTS

Respondent argues against standing because it contends that the goal

of the dependency system is not to change the legal relationship of the parent to that of a sibling. (RABM pp. 35, 39.) However, this contention is irrelevant to the issue of standing; standing does not flow from simply being a "goal of dependency system." The creation of a new sibling relationship is a *consequence* of the plan of adoption with the paternal grandparents. J.C. argues that he will still have another, significant legal relationship with his son, if his parents adopt. To the contrary, if the foster mother adopts- - all de facto and de jure relationships with his son will be forever severed. And the loss of this new legal relationship is a direct injury to J.C.- - this loss confers standing.

Respondent contends, absent any statutory or legal authority, that J.C. would have no right to assert a legal sibling interest, in the event his parents are allowed to adopt K.C. (RABM pp. 39-41.)

Respondent cites *In re Jacob E.*, as support for the argument that J.C. could not petition for visitation. (*In re Jacob E.* (2006) 121 Cal. App. 4th 909, 925.) But this compares apples and oranges. In *Jacob E.*, the mother asked for visitation after the termination of parental rights, and the court held that "mother's attempt to obtain visitation with Jacob was in substance a collateral attack on the termination of her parental rights" and that she "was asking the court to reinstate her as a parent, and do what it no longer

had jurisdiction to do." (*Ibid.*) The mother did not request post-adoption sibling visitation, she requested visits, as a *parent* after her rights were terminated, but before an adoption was ordered.

Likewise Respondent cited *Amber R.* as support, but the facts of this case also are inapposite to post-adoption sibling visitation. (*Amber R. v. Superior Court* (2006) 139 Cal. App. 4th 897, 900.) In that case, the mother, Amber R., sought to be identified as an individual "important" to her child under section 366.3, subdivision (e) and for an order allowing visitation- - the "trial court concluded she lacked standing to file such a petition." (*Ibid.*) Again, this case does not address the post-adoption legal sibling relationship, the mother requested visits, as an interested person, after her rights were terminated, but before an adoption was ordered.

Respondent is correct that a biological parent has no right to postadoption contact, absent an postadoption contact agreement. (Fam. Code § 8616.5.) But none of the authority cited deals with an adoptive sibling, who also happens to be the biological parent, and the legal relationship created between siblings.

A New York court has grappled directly with the issue of an adoptive sister, who also happened to be the biological parent, petitioning for sibling visitation with her biological child. While finding the petitioner

has no standing to seek visitation with her child on the basis of being the child's biological mother, the court rejected the "argument that petitioner lacks standing to seek visitation with her sibling. . . because she is neither of the whole or the half blood to her adopted brother" and held that "although petitioner ceased being a parent to her child when the respondents adopted him she did assume the role of a full sibling and may commence a proceeding seeking visitation with her adoptive brother." (*Jeanette H. v Angelo V.* (1990) 562 N.Y.S.2d 368, 369.)

Lastly, J.C. challenges the inference lurking under the surface of the entire analysis is that granting the parent standing to challenge the juvenile court ruling on relative placements is inimical to the best interests of the child. (RABM pp. 32-33.) The contrary is true. The best interests of the child are always enhanced by a full and fair hearing on the merits when the juvenile court is grappling with decisions which will affect the child for the rest of its life, and similarly, by a full and fair review of the merits on appeal. Accurate and just decisions can withstand the light of scrutiny and review.

Date: December 2, 2010

Monica Vogelmann
Attorney for J.C.

Word Count Certification

Pursuant to rule 8.520(c)(1) of the California Rules of Court, I, Monica Vogelmann, appointed counsel for appellant, hereby certify that I prepared the foregoing Appellant's Opening Brief on the Merits on behalf of my client, and that the word count for this brief is [_8,641__] excluding tables. This brief therefore complies with the rule which limits a computer-generated brief to 14,000 words. I certify that I prepared this document in Word Perfect X4 word processing program, and that this is the word count the Word Perfect X4 word processing program generated for this document.

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

Date: December 2, 2010

_____

Monica Vogelmann

MONICA VOGELMANN
Attorney at Law
P.O. Box 1034
Cooperstown, NY 13326

In re K.C.
Supreme Court No. S183-320
Court of Appeal No. F058395
Superior Court No. 08JD0075

DECLARATION OF SERVICE

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

Central Cal.App. Program.
2407 J Street, Ste. 301
Sacramento, CA 95816

Superior Court Clerk
Juvenile Dpt, Appeals
1426 South Drive
Hanford, CA 93230

John C.
address of record

Kings County Counsel
1400 W. Lacey Blvd.
Hanford, CA 93230

William Fjellbo, Esq TC
47948 Seminole Dr.
Coarsegold, CA 93614

Kings Cnty Minors Adv, Mi TC
1400 W. Lacey Blvd
Hanford, CA 93230

Court of Appeal, Fifth Appellate District
2424 Ventura Street
Fresno, CA 93721

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