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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re KALEB M., a Person Coming
Under the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.K.,

Defendant and Appellant.

A170955

(Alameda County
Super. Ct. No. JD-0357280-1)

K.K., the de facto parent of minor Kaleb M., appeals from the juvenile court's order permitting the Alameda County Social Services Agency (Agency) to remove Kaleb from her care and place him with his maternal relative. She contends the juvenile court erroneously removed Kaleb from her home without complying with the procedures set forth in Welfare and Institutions Code¹ section 366.26, subdivision (n), and without considering the caretaker placement preference under section 366.26, subdivision (k). K.K. further challenges the sufficiency of the evidence supporting the placement order.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

We conclude that K.K. was not entitled to the caretaker preference, and that subdivision (n) of section 366.26 is inapplicable. K.K. otherwise lacks standing to challenge the order. Accordingly, we dismiss the appeal.

I. BACKGROUND

A. Detention and Reunification Services

After receiving a report that Kaleb's mother tested positive for methamphetamine at Kaleb's birth, the Agency took Kaleb into protective custody and placed him with appellant.

The Agency filed a petition pursuant to section 300, subdivisions (b)(1) and (g). The identity of Kaleb's father was unknown. The juvenile court sustained the petition and ordered that reunification services be offered to his mother.

The Agency filed a six-month status review report in July 2023. The Agency had been unable to contact Kaleb's mother, and it recommended that the court terminate her reunification services and set a section 366.26 hearing. The Agency had completed an adoption assessment and recommended adoption as the alternative to family reunification.

As no relatives had previously been identified for placement, Kaleb was still in appellant's care. According to the Agency report, a maternal uncle recently provided the Agency with contact information for a maternal great-aunt, Kimberly G. The Agency contacted Kimberly in early July, and she said she would be willing to care for Kaleb. The Agency reported that it would submit a referral to assess Kimberly for placement.

At the six-month review hearing, the juvenile court terminated reunification services and set a section 366.26 hearing for November 2023.

B. The Agency's Relative Placement Assessment Pending the Section 366.26 Hearing

In August 2023, the juvenile court granted appellant's request to be designated the de facto parent of Kaleb.

In November 2023, appellant filed a request to be designated a prospective adoptive parent.

Approximately a week later, the Agency filed an addendum report requesting a continuance of the section 366.26 hearing so that it could continue assessing Kimberly for placement. As detailed in the report, Kimberly had completed most, but not all, of the steps required to obtain approval for placement, and she was willing to adopt Kaleb.

At a subsequent hearing, the Agency informed the court that it needed more time to assess adoption as Kaleb's permanent plan and to evaluate Kimberly for placement. Additionally, because Kaleb required specialized medical care, the transition between placements "would require some preplanning and some education."

Appellant's attorney informed the court that appellant intended to pursue adoption of Kaleb. She was willing to have an open adoption so that Kaleb could have contact with his biological family.

To ensure that any change in placement was in the best interests of Kaleb, the juvenile court set a "placement review" hearing for January 2024 and continued the section 366.26 hearing to March 2024. The court ordered "that there be no change in placement without court order" so that the parties could have an opportunity to object to any proposed change in placement. The court denied without prejudice appellant's request to be designated a prospective adoptive parent.

At the placement review hearing, the juvenile court set a contested hearing on the placement issue for the same day as the section 366.26 hearing, with placement to be determined first. Kaleb was to remain in appellant's care in the interim. The court further found that a permanent plan of adoption was appropriate and ordered it as Kaleb's permanent plan.

C. Contested Placement Hearing

The Agency filed a relative placement assessment report ahead of the combined placement and section 366.26 hearing. The Agency recommended placement with Kimberly based on the factors in section 361.3.

The court continued the combined hearing. It denied the Agency's request to lift the prior order prohibiting a change of placement pending a hearing but granted the Agency discretion to permit overnight visits for Kimberly.

The continued hearing was held on May 22, 2024. After hearing argument from the parties, including appellant, the juvenile court found it was in Kaleb's best interests to place him with Kimberly. Accordingly, the court granted the Agency's request to lift the "stay" prohibiting the Agency from changing Kaleb's placement. The court reset the section 366.26 hearing for June 2024.

On June 2, 2024, the Agency placed Kaleb with Kimberly. The section 366.26 hearing was held on June 25, 2024. The juvenile court terminated parental rights and approved adoption as Kaleb's permanent plan.

II. DISCUSSION

In this appeal, appellant challenges the juvenile court's May 2024 order permitting the Agency to place Kaleb with Kimberly. She contends the juvenile court erred in making the order because it failed to consider the

caretaker placement preference under section 366.26, and because it was in Kaleb’s best interests to remain in her care. Additionally, appellant asserts that the May 2024 hearing did not comport with the notice and hearing requirements in section 366.26, subdivision (n). Before turning to the merits of appellant’s arguments, we address the threshold issue of whether she has standing to bring this appeal.

A. Standing

The Agency contends that, because appellant was a de facto parent, she lacks standing to challenge the juvenile court’s order permitting the Agency to place Kaleb with Kimberly.

In response, appellant argues that she has standing to appeal the placement order because she is seeking to enforce her statutory rights to preferential placement consideration under section 366.26, subdivision (k), and to notice of, and participation in, a change of placement hearing under section 366.26, subdivision (n). She cites decisions concluding the appellant had standing to challenge a juvenile court’s placement order where the appellant’s right to preferential consideration under section 361.3 was implicated. (See, e.g., *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034–1035.) Likewise, if appellant is correct that she is entitled to preferential placement consideration and to notice under section 366.26, then she may have standing to challenge the placement order. (See *In re P.L.* (2005) 134 Cal.App.4th 1357, 1361 (*P.L.*) [“To have standing, a person must have *rights* that may suffer injury.”].) We need not resolve the question because, as explained below, appellant was not entitled to preferential placement consideration, nor is section 366.26, subdivision (n) applicable in this case.

Appellant further argues that, regardless of her statutory rights, she had an interest in the “ ‘companionship, care, custody, and management’ ” of Kaleb sufficient to confer standing on her to challenge the May 2024 placement order. We address this standing argument because, in addition to her statutory claims, appellant appears to argue that there was insufficient evidence to support the juvenile court’s finding that a change of placement was in Kaleb’s best interests and that the court improperly relied on the relative placement preference in section 361.3. We conclude that appellant’s interest in the custody and care of Kaleb is not the type of interest that would give her standing to challenge the placement order.

In dependency proceedings, only a party aggrieved by an order has standing to appeal. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 837, disagreed with on other grounds in *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 99.) “To be aggrieved, a party must have a *legally cognizable interest* that is injuriously affected by the court’s decision. [Citation.] The injury must be immediate and substantial, and not nominal or remote.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948, italics added, criticized on another point in *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017.)

In *In re B.G.* (1974) 11 Cal.3d 679 (*B.G.*), the California Supreme Court first raised the concept of de facto parenthood when it considered whether foster parents had standing to participate as parties in juvenile proceedings. The court recognized that a person who assumes the role of parent and raises a child in his own home, “may in time acquire an interest in the ‘companionship, care, custody and management of that child.’ ” (*Id.* at pp. 692–693.) The court held that these “de facto parents” should be permitted to appear as parties in dependency proceedings to “assert and

protect their own interest in the companionship, care, custody and management of the child” and provide the court with important information. (*Id.* at p. 693.) However, the court expressly declined to hold that nonparents who assume a parental role thereby become “parents” or “guardians,” with all the rights such a status implies. (*Id.* at p. 693, fn. 21.)

Consistent with the holding of *B.G.*, rule 5.502(10) of the California Rules of Court defines a de facto parent as “a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period.” Individuals who have been granted de facto status have the right to be present at hearings, be represented by counsel, and present evidence. (Cal. Rules of Court, rule 5.534(a).)

After *B.G.* was decided, the California Supreme Court clarified that “a de facto parent’s standing is limited by the *rationale* underlying the de facto parent doctrine itself: ‘The de facto parenthood doctrine simply recognizes that persons who have provided a child with daily parental concern, affection, and care over substantial time may develop legitimate interests and perspectives, and may also present a custodial alternative, which should not be ignored in a juvenile dependency proceeding. *The standing accorded de facto parents has no basis independent of these concerns.*’” (*In re B.S.* (2021) 65 Cal.App.5th 888, 894, quoting *In re Kieshia E.* (1993) 6 Cal.4th 68, 77–78.)

“[T]hose who attain the status of de facto parenthood ‘are not equated with . . . parents or guardians for purposes of dependency proceedings and standing to participate does not give them all of the rights and preferences accorded [parents or guardians].’” (*In re Kieshia E.*, *supra*, 6 Cal.4th at p. 77.) They do not have the right to visitation, custody, or placement of the

minor. (*Id.* at p. 82 (dis. opn. of Kennard, J.).) De facto parent status “merely provides a way for the de facto parent to stay involved in the dependency process and provide information to the court.” (*In re Bryan D.* (2011) 199 Cal.App.4th 127, 146.)

Since then, multiple Courts of Appeal have held that a de facto parent has no standing to appeal an order approving the agency’s placement of the minor to someone else because a de facto parent does not have a *legal* right to custody or visitation. (*P.L.*, *supra*, 134 Cal.App.4th at pp. 1361–1362; *In re B.S.*, *supra*, 65 Cal.App.5th at p. 897; *In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1490–1491 [de facto parent did not have right to continued placement of minor in her home]; see also *In re J.B.* (2025) 109 Cal.App.5th 133, 141 [de facto parent not entitled to placement of minor]; accord, *In re Crystal J.* (2001) 92 Cal.App.4th 186, 191; *In re Brianna S.* (2021) 60 Cal.App.5th 303, 314 [“de facto parent status does not grant the person any *substantive* rights to ‘. . . custody, [or] continued placement of the child’ ”].) As the court in *P.L.* explained, the de facto parent was not aggrieved by the juvenile court’s order removing the child from her home because de facto status did not confer on her the rights accorded to parents or legal guardians; she only had limited rights to participate in hearings. (*P.L.*, at p. 1361.)

In arguing that she has standing to bring the instant appeal, appellant relies on *In re Vincent M.* (2008) 161 Cal.App.4th 943 (*Vincent M.*) and *In re D.P.* (2023) 92 Cal.App.5th 1282. In *Vincent M.*, the mother had surrendered the child, and the father was unknown. The juvenile court set a section 366.26 hearing with a permanent plan of adoption, placed the child in foster care, and granted the foster parents de facto status. The father came forward several months later and filed a section 388 petition requesting

presumed father status and reunification services. The court granted the petition, and the de facto parents appealed. (*Vincent M.*, at pp. 949–950.)

The *Vincent M.* majority rejected the father’s argument that the de facto parents lacked standing to appeal, concluding instead that the de facto parents’ rights and interests were injuriously affected by the juvenile court’s ruling because it took the case “off the adoption track.” (*Vincent M.*, *supra*, 161 Cal.App.4th at p. 953.)

The dissent in *Vincent M.* disagreed. (*Vincent M.*, *supra*, 161 Cal.App.4th at p. 961 (dis. opn. of Armstrong, J.).) It acknowledged that the de facto parents suffered “emotional pain” but concluded that they lacked standing because they had no legal right to adopt the child at that stage of the proceeding. (*Id.* at pp. 964, 962–963 (dis. opn. of Armstrong, J.).) The dissent further noted that the majority “does not satisfactorily define [the de facto parents’] legal interests.” (*Id.* at p. 962 (dis. opn. of Armstrong, J.).)

The court in *In re D.P.* cited *Vincent M.* in concluding that the de facto parents had standing to challenge the juvenile court’s order denying their section 388 petition for placement of the minor in their home. (*In re D.P.*, *supra*, 92 Cal.App.5th at pp. 1285, 1292.) The court reasoned that the de facto parents had “acquired ‘an “interest” which is “substantial” in the “‘companionship, care, custody, and management’ ” of [the child].’ ” (*Id.* at p. 1292.)

In light of the rationale underlying the de facto parent doctrine and the limited rights afforded de facto parents by law, we agree with the decision in *P.L.* and the dissent in *Vincent M.* regarding a de facto parent’s lack of standing to challenge a juvenile court’s placement order.² Although the *B.G.*

² *In re Joel H.* (1993) 19 Cal.App.4th 1185, another case cited by appellant, is distinguishable. There, the de facto parent appealed from an

court acknowledged that a de facto parent has an interest in the companionship, care, and management of the child, this interest does not equate with a legal right to custody or placement of the child. (*B.G.*, *supra*, 11 Cal.3d at pp. 692, 693 & fn. 21.) Rather, “de facto parent status provides the de facto parent only the right to be present, to be represented and to present evidence in a dependency proceeding. While courts have described the relationship as substantial, and one deserving of protection, this discussion relates to the reason why a de facto parent is accorded standing to appear in the proceeding.” (*In re Crystal J.*, *supra*, 92 Cal.App.4th at p. 191.)

Appellant therefore does not have standing to challenge the juvenile court’s placement order based on her interest in the companionship, care, and management of Kaleb. As a result, we do not consider her arguments that the juvenile court erred in making its placement order because it was in Kaleb’s best interests to remain in her care and that the court improperly relied on the relative placement preference under section 361.3.

B. Caretaker Placement Preference

Appellant contends the court did not properly consider the caretaker placement preference under section 366.26, subdivision (k), which she asserts applied as of the hearing terminating reunification services. We disagree that appellant was entitled to the caretaker placement preference.

Subdivision (k) of section 366.26 provides that when the court has approved a permanent plan of adoption for a dependent child, a foster parent’s application for adoptive placement shall be given preference over

order permanently barring her from custody based on findings that she and her husband abused the child. (*Id.* at pp. 1192–1193.) “[T]he de facto parents were permitted to challenge the factual findings . . . , not the removal order itself.” (*Vincent M.*, *supra*, 161 Cal.App.4th at p. 964 (dis. opn. of Armstrong, J.).)

other applications if the agency determines the child has substantial emotional ties with the foster parent and removal from the foster parent would be seriously detrimental to the child's well-being. The statutory caretaker preference requires the trial court to process the foster parent's application for adoption first and give it "serious and . . . preferential consideration," but it does not mean the foster parent is automatically entitled to adopt. (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 860 (*Lauren R.*).)

The termination of reunification services is not sufficient to trigger the application of section 366.26, subdivision (k). (*In re M.H.* (2018) 21 Cal.App.5th 1296, 1304, disagreed with on other grounds in *In re N.J.* (2024) 104 Cal.App.5th 96, 127.) By its terms, it applies only after the court "has approved a permanent plan for adoption" or where the minor "has been freed for adoption." (§ 366.26, subd. (k)(1).)

Neither of those circumstances apply here. Under section 366.26, subdivision (c)(3), a court may identify adoption as the permanent placement goal without terminating parental rights only if it makes certain findings. (See *In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1349 [the "identification of adoption as the permanent placement goal" depends on the application of § 366.26, subd. (c)(3)]; *Lauren R.*, *supra*, 148 Cal.App.4th at p. 856.) It does not appear that such findings were made in this case. Nor does the record reveal, before or at the May 2024 hearing, an order made under section 366.26, which establishes the "exclusive procedures for permanently terminating parental rights with regard to . . . the child while the child is a dependent child of the juvenile court." (§ 366.26, subd. (a); see *Lauren R.*, at p. 856 [a child is "freed for adoption" when parental rights are terminated

and the court orders the child be placed for adoption, citing § 366.26, subd. (b)(1)].)

This distinguishes the case from *Lauren R.*, relied on by appellant, where the juvenile court made the findings required under section 366.26, subdivision (c)(3) to approve a permanent plan of adoption and ordered the department to find an adoptive family. (*Lauren R.*, *supra*, 148 Cal.App.4th at p. 856.) Moreover, section 366.26, subdivision (k) merely “gives preference in time for processing the [current caregiver’s] application [by the agency] but does not necessarily mandate that other applications will not also be considered.” (*In re Harry N.* (2001) 93 Cal.App.4th 1378, 1397, superseded by statute on other grounds as stated in *In re R.F.* (2023) 94 Cal.App.5th 718, 729, fn. 9.)

Accordingly, even if the juvenile court did not consider the caretaker preference in determining that the Agency should be permitted to place Kaleb with Kimberly, it did not err in failing to do so.

C. Section 366.26, Subdivision (n)’s Notice and Hearing Requirements

Appellant asserts that as of the May 2024 hearing, she was entitled to, but did not receive, notice under section 366.26, subdivision (n)(3), prior to Kaleb’s removal from her home. She further argues that the juvenile court improperly placed the burden on her at the hearing to prove it was in Kaleb’s best interests to permit the Agency to remove Kaleb from appellant’s care.

Subdivision (n)(3) of section 366.26 entitles a “current caretaker” to notice of the agency’s intent to move a child from the home of a prospective adoptive parent if the current caretaker meets the criteria to be designated a “prospective adoptive parent.” (§ 366.26, subd. (n)(1), (3); *In re M.M.* (2015) 235 Cal.App.4th 54, 60 (*M.M.*)). At a hearing held pursuant to

section 366.26, subdivision (n), the agency has the burden to prove by a preponderance of the evidence that removal from the home of a prospective adoptive parent is in the child's best interests. (*M.M.*, at p. 65.)

In enacting section 366.26, subdivision (n), “the Legislature intended to “limit the removal of a dependent child from his or her caretaker’s home *after parental rights are terminated*, if the caretaker is a designated or qualified as a prospective adoptive parent.” ’ ’ (*M.M.*, *supra*, 235 Cal.App.4th at p. 62, italics added; see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 218 (2005–2006 Reg. Sess.) as amended June 2, 2005, pp. 2–3 [bill “[e]stablishes *for the period between termination of parental rights and the granting of a petition for adoption*, notice and, if requested, a hearing, before removal of a dependent child from the home of a caretaker who either is designated as prospective adoptive parent or qualifies as a prospective adoptive parent” (italics added)].) Thus, the notice and hearing requirements of section 366.26, subdivision (n)(3) “do not apply when a child is removed from potential prospective adoptive parents *prior* to the termination of parental rights.” (*In re Jayden M.* (2014) 228 Cal.App.4th 1452, 1457–1459; *M.M.*, at pp. 61–62.)

Here, the juvenile court’s May 2024 order permitted the Agency to place Kaleb with Kimberly but did not terminate parental rights. Instead, the Agency placed Kaleb with Kimberly on June 2, 2024, and the court terminated parental rights approximately three weeks later. Thus, section 366.26, subdivision (n) does not apply in this case.

Appellant argues for the first time in her reply that she was not provided sufficient notice for, or the opportunity to participate in, a change of placement hearing, as required for de facto parents under California Rules of Court, rule 5.534(a). “[P]oints raised in the reply brief for the first time will

not be considered, unless good reason is shown for failure to present them before.’” (*People v. Smithey* (1999) 20 Cal.4th 936, 1017, fn. 26.) No such showing of good cause has been presented here. Accordingly, the contention is forfeited. We therefore presume the court properly followed applicable law. (*People v. Woods* (1993) 12 Cal.App.4th 1139, 1152.)

In sum, appellant has not established that she had statutory rights under section 366.26 or a legally cognizable interest in Kaleb’s placement. We therefore conclude that appellant has no standing to challenge the placement order.

III. DISPOSITION

The appeal is dismissed.

LANGHORNE WILSON, J.

WE CONCUR:

HUMES, P. J.

BANKE, J.

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In re Kaleb M.