

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re J.B., et.al, Persons Coming Under the  
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.L.,

Defendant and Appellant.

A131769

(Alameda County  
Super. Ct. No. OJ06005142)

C.L., the mother of J.B. (age 16), A.M. (age 12), and I.M. (age 10) (the minors), appeals from orders in a post permanent plan review hearing, continuing the minor’s placement in the home of A.S., a non-relative extended family member. Mother also challenges the court’s visitation order and the order granting de facto parent status to A.S. We remand the matter on the issue of the visitation order, but otherwise affirm.

**I. FACTUAL BACKGROUND**

The minors including O.C., Jr., (age 8), and J.C., (age 7),<sup>1</sup> came to the attention of the Alameda County Social Services Agency (the Agency) in October 2006. A Welfare and Institutions Code,<sup>2</sup> section 300 was filed on October 6, 2006 following a domestic

<sup>1</sup> O.C., Jr. and J.C. are not before us in this appeal.

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

dispute between mother and O.C., Sr. The petition alleged that parents had engaged in domestic violence, that they had a substance abuse problem, and that they were negligent in caring for the children in that they were found to be dirty, smelling of urine and/or feces, and wearing dirty clothes. The home was without hot water and heat, and the children had not been bathed in some time. Mother was arrested for child endangerment and public intoxication while O.C., Sr. was arrested for child endangerment and domestic violence. The children were detained and placed in foster care.

The Agency held a team decision-making meeting that was attended by A.S., who identified herself as the children's grandmother. At the close of the meeting, A.S. acknowledged that she was actually mother's former foster parent. Mother's maternal uncle, C.L. also participated in the meeting. The team opted to expedite placement with A.S. The minors were subsequently placed with A.S., and her home was temporarily approved as a fictive kin home.

Following a contested jurisdictional hearing, the court sustained the allegations of an amended section 300 petition, adjudged the minors dependents of the court and ordered reunification services for mother. The court approved temporary placement of the minors with A.S. and ordered the Agency to assess her home. The minors' placement with A.S. was approved on December 10, 2006.

At the time of the six month review in April 2007, the minors had adjusted to their placement but had some difficulty with the more structured environment and rules about behavior and manners with which they were not accustomed. Mother was in partial compliance with her reunification plan. She regularly visited the minors, but was inconsistent with drug testing. She had begun an outpatient treatment program, but had attended only 14 of 22 classes. She also had not consistently participated in psychological therapy. The court continued the minors in out of home placement and ordered that reunification services for mother be continued.

The twelve month review hearing was held on October 22, 2007. The Agency reported that mother had made good progress in her alcohol treatment program and had improved her attitude and adherence to her case plan. Mother was no longer living with

O.C., Sr. The Agency further reported that the minors had adjusted to their placement with A.S., but were anxious to return to mother. The Agency opined that minors could return home before the end of the next reporting period if mother continued in her sobriety and increased her parenting skills. It recommended that the minors remain in placement with A.S., and that reunification services be continued for an additional six months. The court adopted the Agency's recommendation.

By the time of the eighteen month review hearing in April 2008, mother had failed to maintain her sobriety. She had been out of treatment and had failed to drug test for approximately four months. Mother had also ceased to attend individual therapy and had not followed through with the Agency's referral for a psychological evaluation. Finally, mother was involved in a domestic violence incident with O.C., Sr. during an overnight visit she had with the minors in which the police were called.

The Agency further reported that A.S. was strongly committed to caring for the minors but that she was not ready to become their legal guardian. The Agency recommended that reunification services be terminated due to mother's failure to maintain sobriety and to avail herself of services and treatment. The matter was referred to mediation. The parties reached an agreement on visitation, individual therapy, and a psychological evaluation for mother. Mother therefore withdrew her request for a contested hearing. The court adopted the mediation agreement, and found that reasonable services had been provided. The court terminated reunification services and found that the minor's out-of-home-placement was necessary and appropriate. The court noted that it was aware that it was separating the minors from their two younger siblings, O.C., Jr. and C.J., but that the placement was appropriate so that the minors could be placed with their respective relatives.<sup>3</sup>

At subsequent status review hearings occurring from 2008 through February 2010, 2009, the court continued the minors' placement with A.S., finding that the placement

---

<sup>3</sup> The Agency's report states that there are not any relative caregivers that are able to accommodate all five of the children. O.C., Jr. and J.C. were placed with their paternal aunt.

was necessary and appropriate. The Agency's report for the February 8, 2010 status review hearing noted that the minors appeared to be doing well in A.S.'s home. While A.M. and I.M. had some behavioral problems at school the previous year, they had improved and were making solid academic progress. J.B. was developmentally delayed and diagnosed with a cognitive disorder. He was enrolled in special education classes in the mornings and in mainstream classes in the afternoon, and he was doing well academically. The minors were emotionally stable. A.S. continued to be committed to providing a safe, stable, and loving home, but was not interested in pursuing legal guardianship or adoption.

On March 22, 2010, the court dismissed the dependency case of O.C., Jr. and J.C. upon the Agency's request. The Agency recommended that jurisdiction be terminated because legal guardianship of O.C., Jr. and J.C. was granted on December 17, 2009. The court entered the order as requested.

The Agency's report for the August 12, 2010 status review hearing was similar and recommended that the minors' placement with A.S. continue. Three maternal uncles, one maternal aunt, and one maternal cousin, however, appeared at the hearing to contest the recommendation. The court set the matter for a contested hearing on September 17, 2010.

The Agency submitted an addendum to its status review report to address allegations that A.S. spanked the minors and that they lived in fear. The Agency's social worker met with the minors to ask about the allegations. The minors reported that A.S. had spanked them in the past but that nothing had occurred recently. J.B. said A.S. last spanked him in 2007. A.M. and I.M. stated that they could not remember when they were last spanked but believed it was over a year ago. The minors reported that A.S. now disciplined them by giving them time outs, taking away privileges, or giving them extra chores. A.S. admitted that she spanked the minors in the past, but had not done so since the Agency spoke to her regarding this form of discipline in 2008. The minors told the social worker that they wished to remain in A.S.'s home. Mother preferred that the placement be changed to either her brother, C.L. or her sister, A.L. C.L.'s home had been

assessed but had not yet been approved. C.L., however, remained supportive of the minors continuing in A.S.'s home. The Agency found A.L.'s home met the requirements for approval but did not have adequate space to accommodate the minors. The Agency recommended that a section 366.26 hearing be set and that a permanent plan of legal guardianship be ordered.

A contested review hearing was held over several days beginning in September 17, 2010, and concluding on March 3, 2011. A.L., the minors' maternal aunt, testified that she had seen A.S. discipline J.C. by slapping him and shoving him. J.C. told A.L. that he did not want to live with A.S. anymore and that he wanted to live with her. A.L. was willing to have J.L. placed with her but did not have room for her nieces. A.L. also testified that she had observed A.S. slap A.M. at the beginning of the year. A.S. slapped A.M. because she had not cleaned the kitchen. A.L. had also seen A.S. hit I.M. in the chest, causing her to cry. A.L. further testified that she usually was at A.S.'s home once or twice a week, and that A.S. drank alcohol daily and that she took sleeping pills.

C.L., the minors' paternal uncle, knew A.S. because she was also his foster mother. He visited A.S.'s home about twice a week to visit with the minors. Many times the minors were at home in the evening without any supervision. J.B. told C.L. that A.S. hit him; C.L. reported the incident to the Agency a couple of weeks before the scheduled review hearing of August 12, 2010. C.L. requested that the Agency investigate.

C.L. also testified that he observed A.S. hit the minors when she felt they were acting disrespectful. He further testified that he saw A.S. drink brandy in her home frequently during the past two years, and knew that she took sleeping pills.

A.M. and I.M. testified in chambers. I.M., who was in fourth grade, told the court that her grandmother (A.S.) often arrived home at 8:00 p.m. and then left to go to a party with her friends, returning at 12:30 or 12:45 a.m. I.M. said that she knew this because she stayed awake until A.S. returned. A.S. did not know that she was awake. She said that the minors were home alone during these evenings. I.M. told the court that she wanted to live with C.L. She said that C.L., A.L. and A.S. were all talking about where she should live. Her father told her that he did not care where she lived but that she was

not living with C.L. She acknowledged that A.S. had hit her on her hand about a year ago, but since the court hearing had started, she had stopped.

A.M. told the court that she wanted to live with C.L. and her mother. A.M. said A.S. gave her a whipping when she stole something, but that she did not receive a whipping when they were going to go to court. A.M. said that A.L. told her that A.S. was “only in it for the money.”

V.B., another maternal aunt, testified that she lived with A.S. during the past year and that A.S. was also her foster parent from ages 15 to 17. A.S. never physically abused her. She never saw A.S. abuse J.B., but she had seen her spank A.M. and I.M. several times. She opined that A.S. had changed as a result of her drinking and use of sleeping pills and Valium.

A.S. testified that she worked 40 to 60 hours a week as a licensed administrator working with developmentally disabled adults and children. She handles some of her work hours from home on the telephone. She has a six bedroom home with three bathrooms and currently resides with the minors. She acknowledged that she had spanked the minors. The Agency told her from the beginning of the placement in 2006 that she could not spank the minors. She said that she never agreed not to use corporal punishment and believed that if the minors needed to be spanked, then she would spank them. She said that when the minors were told they were not to get spanked, their attitudes were horrible. She considered herself to be the minors’ grandmother, not their foster mother, and she did not tolerate disrespect.

A.S. admitted that she drank brandy but said that she had a drink about two times per week and did not have a drinking problem. She was not currently taking any prescription medication, but had taken Elavil to help her sleep for about eight years.

A.S. testified that she seldom socialized and went out about once a month on the weekend. She relied on her daughter or the minors’ father to babysit for the minors when needed.

A.S. also testified that in June 2010, V.B. discovered the financial documents disclosing how much A.S. received as a foster parent for the minors.<sup>4</sup> After learning about the money, V.B. began telling the minors that A.S. only wanted them for the money and that V.B. and C.L. were going to take custody of them.

A.S. further testified that the minors know that she is not their grandmother but they considered her as their grandmother. She uses the funds she receives for the minors' benefit as her income is enough to support herself and her personal expenses. She had not planned to be raising the minors because she thought initially that the placement would be temporary. But she had rearranged her life to raise them and was in it for the duration. She would not object to the minors being placed with their respective fathers or C.L. if that placement was in the best interests of the minors.

The hearing continued on February 3, 2011. Damon Jones, the Agency's social worker on the case since December 2009, testified that the minors received monthly therapy from Mr. Martz, but he did not know the duration of the sessions. He testified that mother had visited with the minors in December 2009 but did not know whether she had visited with the minors in January. He testified that the minors' visits with their fathers were unsupervised even though the case plan required that A.S. supervise the visits. He was aware that the minors visited their siblings during the winter break but knew that lack of sibling visitation was an issue. He was not present during A.S.'s testimony, but his supervisor told him that she had admitted spanking the minors. He continued to recommend A.S. as a legal guardian of the minors based on his meetings with the minors where they represented that things were going well with the placement.

At the conclusion of the testimony, mother's counsel asked that the minors be removed from A.S.'s home and that they be placed with A.L. Counsel for J.B.'s father argued that J.B. should remain with A.S. He opined "that the reason why we're here today is because the [L.] family found out what type of financial assistance [A.S.] was receiving for the care of the children; and it was only after they found that out that the

---

<sup>4</sup> The Agency reported that A.S. receives \$766 for A.M., \$865 for I.M. and that J.C. receives approximately \$500 in SSI benefits.

allegations started surfacing about the inability of [A.S.] to care for the kids.” Counsel for the father of A.M. and I.M. also questioned the timing of the report by the L. family and the credibility of C.L. and other relatives concerning the alleged abuse. She indicated that the father of A.M. and I.M. wanted their placement to remain with A.S. Counsel for the Agency also questioned the credibility of the L. family witnesses and urged the court to look at the current status of the minors. She noted that the minors continued to see a therapist and that a change in therapy for one of the minors was in the offing, and that A.M. and I.M.’s report cards reflected that they were doing very well in school. She argued that the reason why the minors were “doing as well as they can be has everything to do with [A.S.]”

The court ordered that the Agency develop a better plan for the minors. It was concerned that Jones did not “have a better grasp as to what was going on with these children . . . .” The court stated that there was insufficient information from the therapist, and that the Agency was not following the minors closely enough. The court continued the matter for a month.

Jones submitted an interim review report on behalf of the Agency in which he recommended that the minors remain with A.S. in a permanently planned living arrangement. He reported that A.M. was taken to a new doctor for her issues with bedwetting and the doctor made several recommendations and will likely initiate medication. He explained that the minors had unsupervised visitation with their respective fathers since March 2008 and that the fathers had been a positive presence in the minors’ lives. The narrative in the prior report that the visits were to be supervised was a typographical error. He had referred the family for additional services and support through the Project Permanence Program, a program providing support services and information about community resources. He noted in his report that the case workers at Project Permanence are mandated reporters “and will provide the agency with another set of eyes on the home.” The minors’ therapy was continuing with Martz, and a referral for a new therapist for A.M. was in progress. The minors were thriving in A.S.’s home and they told Jones on numerous occasions that they wanted to stay with A.S. A.M. and I.M.

were honor roll students and were working at or above grade level in all subjects. J.B., who is developmentally delayed, was able to care for himself and complete basic chores without supervision. Jones further acknowledged that A.S. had made some parenting mistakes in her discipline of the minors and had been provided education about the types of discipline that are acceptable. Her style of discipline was considered a licensing violation but was not the same issue as child abuse or neglect.

The contested hearing continued on March 3, 2011. Counsel for mother argued that the minors' placement with A.S. was not appropriate. She acknowledged that out-of-home placement was necessary. The respective counsel for the fathers supported the continued placement of the minors with A.S.

The court found that the permanent plan of placement in A.S.'s home, "a fit and willing relative" was appropriate and ordered that it be the permanent plan. The court further granted A.S.'s request to be appointed the minors' de facto parent. Mother filed this appeal.

## **II. DISCUSSION**

### ***A. Visitation***

Mother contends that the court erred in not addressing the issue of her visitation schedule with the minors and the minors' visits with their siblings, O.C., Jr., and J.C. She argues that the court improperly delegated its authority on the issue to the Agency.

As the Agency points out, the court did not address the issue of mother's visits with the minors during the contested hearing on the issue of the minors' placement. Indeed, as both mother and the Agency acknowledge, the order concerning the duration and frequency of mother's visitation with the minors was made on May 2, 2008. The record indicates that on that date, the court terminated reunification services and ordered that the Agency "arrange for visitation between the [minors] and the mother and father as frequently as possible consistent with the [minors'] well being." Mother did not appeal that order and the time for doing so has long expired. (See Cal. Rules of Court, rule 8.406(a)(1) [appeal must be filed with 60 days from making of the order being appealed].) Mother is precluded from challenging the prior order in her appeal from the

court's March 3, 2011 order. "An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed." (*In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 563.)

At the contested review hearing on March 3, 2011, mother, however, did request that the court order a visitation schedule. The court's order following the hearing did not provide for visitation, though it included an order that "[a]ll prior orders shall continue except as modified herein." The record shows that the previous order on visitation was entered on August 12, 2010, providing that the "[c]aregiver [is] to supervise visit[s] between the mother and the children." Hence, it would appear that the court intended to continue the visitation order previously entered.

The testimony during the hearing revealed that A.S. was no longer willing to supervise visits with mother and the minors, and that the Agency was not clear on who was an approved supervisor for mother's visits. In light of the this testimony, and mother's request for a visitation schedule, the court should have entered a new visitation order for mother. The Agency concedes that the issue of visitation between the mother and the minors should be remanded to the juvenile court to make an appropriate order concerning visitation. We remand the matter to the court solely on this issue.

In her opening brief, mother also challenged the court's failure to order visitation between the minors and their siblings. In her reply brief, she concedes that the court lacked jurisdiction on the issue. By the time of the interim review hearing on March 3, 2011, the court no longer had jurisdiction over the minors' siblings. The court dismissed the dependency case involving O.C., Jr. and J.C. on March 22, 2010. Thus, the juvenile court had no jurisdiction over the minors' siblings to order visitation involving them. (*In re A.R.* (2012) 203 Cal.App.4th 1160, 1170-1171 [A.R.]) While the court had subject matter jurisdiction over the minors, jurisdiction over the minors' siblings terminated when the court dismissed the dependency case involving them. (*Ibid.*)

### ***B. De Facto Parent***

Mother further asserts that the court erred in granting A.S. de facto parent status. Mother lacks standing to challenge the court's order because she is not aggrieved by the ruling. (See *In re Crystal J.* (2001) 92 Cal.App.4th 186, 189.)

“[A] parent cannot raise issues on appeal from a dependency matter that do not affect her own rights. [Citation.]” (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703.) Mother's interest in the proceedings was to reunify with her dependent children. (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1835.) “[A] ‘de facto parent’s nexus with the proceeding is that person’s separate interest and relationship with the child, which may have developed over time through the daily care, affection and concern for the child. [Citation.]’ ” (*Id.* at pp. 1835-1836.) The court's granting of de facto parent status to A.S. did not preclude mother from presenting any evidence relating to the minors' best interests or her relationship with them. (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.) The court's ruling did not in any way affect mother's interests. As she was not aggrieved by the order, she may not challenge it on appeal.

### ***C. Placement***

Mother further contends that the trial court abused its discretion in not removing the minors from A.S.'s home. She asserts that the evidence established that the minors were not safe with A.S. due to her use of corporal punishment on the minors.

Preliminarily, we address the Agency's argument that mother lacks standing to appeal the issue of the minors' placement. We conclude that mother has standing to raise the issue.

Section 366.3 provides for review hearings for those dependent children in long-term foster care. (§ 366.3, subd. (e).) Subdivision (f) of section 366.3 provides that unless their parental rights have been terminated, parents of dependent children “are entitled to receive notice of, and participate in, those hearings.” “[T]o ‘participate’ in the hearing connotes involvement as a party to the proceeding, one essential aspect of which is the reasonable expectation that parents could challenge departmental proposals and proposed court modifications.” (*In re Kelly D.* (2000) 82 Cal.App.4th 433, 438.) Thus,

section 366.3 contemplates that parents continue to have rights or interests in the review hearings of their dependent children. (See *In re K.C.* (2011) 52 Cal.4th 231, 237 [when parental rights are not terminated, a parent retains a legally cognizable interest in his or her child’s affairs].) “All parents, unless and until their parental rights are terminated, have an interest in their children’s ‘companionship, care, custody and management . . . .’” [Citation.] (*Id.* at p. 236.) It follows that mother has standing to challenge the juvenile court’s placement decision as affecting her interests. (See *In re D.R.* (2010) 185 Cal.App.4th 852, 859 [party must have legally cognizable interest that is injuriously affected by the juvenile court’s decision].)

The Agency’s reliance on *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023 and *In re Frank L., supra*, 81 Cal.App.4th 700 is misplaced. In *Cesar V.*, the court held that the presumed father, who had stipulated to termination of reunification services, had no standing to appeal an order denying a relative placement. (*Cesar V., supra*, 91 Cal.App.4th at p. 1035.) In *Frank L.*, the court held that an incarcerated mother did not have standing to challenge the court’s order placing her son with his paternal aunt, away from his two siblings, because her appeal was based on the minor’s interest in his relationship with his siblings as opposed to an issue related to mother’s interest. (*Frank L., supra*, 81 Cal.App.4th at pp. 701-703.) Neither case addressed the issue of a child in a long term placement where parental rights had not been terminated. Here, mother continues to have a right to participate in review hearings concerning the continuing appropriateness of her children’s placement. (§ 366.3, subd. (e)(1).)

Mother argues that the court should have removed the minors from A.S.’s home because the evidence showed that they were not safe there because of A.S.’s use of corporal punishment. While the evidence did reflect that A.S. had used corporal punishment by spanking the minors during their placement with her, it also showed that the Agency had addressed the licensing violation with A.S. and provided education about the acceptable types of discipline.

Moreover, while mother argued that the minors should be placed with A.L., the maternal aunt, the Agency reported that A.L. did not have adequate space to

accommodate the minors. Of particular import, A.L. had recently refused to have any contact with the minors because she was angry about the court proceedings and the fact that the minors had expressed their desire to remain in A.S.'s care. The court did not err in implicitly finding that A.L. was not an option for placement.

The record, as a whole, demonstrates that the minors' placement with A.S. continued to be appropriate. The minors, who initially expressed interest in living with C.L., ultimately wished to remain in A.S.'s home. A.S., in turn, was committed to providing a loving and stable home for the minors. Finally, the evidence showed that the minors were thriving in A.S.'s home; they were doing well in school, and presented as happy and expressing their desire to remain with A.S. On this record, the juvenile court did not abuse its discretion in continuing the minors' placement with A.S.

### **III. DISPOSITION**

The matter is remanded to the juvenile court to make an appropriate order addressing the frequency and duration of mother's supervised visits with the minors. In all other respects, the orders are affirmed.

---

RIVERA, J.

We concur:

---

RUVOLO, P. J.

---

REARDON, J.