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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re JOSIAH R., a Person Coming Under
the Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

M.R.,

Defendant and Appellant.

A139611

(San Francisco County
Super. Ct. No. JD11-3081)

M.R. (mother), the mother of Josiah R., appeals from juvenile court orders terminating her parental rights, granting a petition brought by the San Francisco Human Services Agency (Agency) to discontinue her visits with Josiah, and denying a petition brought by E.W., Josiah’s nonparty half-brother (brother), to permit him to visit Josiah.¹ Mother contends that her parental rights were wrongly terminated because (1) the Agency and the court failed to comply with the Indian Child Welfare Act (ICWA) and (2) the order terminating parental rights was improperly premised on her continuing ability to visit Josiah. She also contends that the court abused its discretion in denying brother’s petition. We conditionally reverse the order terminating mother’s parental rights and

¹ All statutory references are to the Welfare and Institutions Code unless otherwise noted. Mother’s parental rights were terminated under section 366.26. The Agency’s petition and brother’s petition were brought under section 388.

remand for the limited purpose of compliance with the ICWA-related duties of inquiry and notice. We affirm the order discontinuing visitation between mother and Josiah. We also conclude that mother lacks standing to challenge the court's denial of brother's petition.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

Josiah was born in 2009, and his father is C.D. (father).² In March 2011, when Josiah was 20 months old, mother was arrested for fighting in public with J.W., brother's father, while both boys were present. Because Josiah had "an unexplained bruise on his left eye," he was detained and placed in foster care, and the Agency filed a petition to have him declared a dependent of the court. Brother, who previously had been removed from mother, was not detained because he was in J.W.'s custody and was no longer a dependent.

The Agency's petition alleged jurisdiction over Josiah under section 300, subdivisions (b) and (g) based on mother's conduct and father's absence. At a jurisdictional hearing held in May 2011, the juvenile court found jurisdiction as to mother under subdivision (b) because mother had mental health issues, a substance abuse problem, and a relationship with J.W. that involved domestic violence, and she had failed to benefit from services provided when brother was a dependent. The petition's remaining allegations about her were struck. Two months later, in July, a hearing was held on jurisdiction as to father and disposition as to both parents. The court found jurisdiction as to father under subdivision (b) based on his substance-abuse problem, but it struck the allegation under subdivision (g). The court ordered visitation and reunification services for both parents.

² Father's whereabouts were unknown when the initial detention report was filed. He was subsequently located in jail, and in July 2011 the juvenile court found him to be Josiah's presumed father on the basis of a paternity test. He is not a party to this appeal, and we omit facts relating to him except where relevant.

The original petition indicated that no inquiry under ICWA had been performed. The detention report filed with the petition stated, “Multiple tribes were noticed when [brother] was a dependent and there was no finding of Indian status with regard to the mother. However, the father [of Josiah] has not been asked as we have not had contact with him yet.” The report stated that it was “[u]nknown” whether Josiah was an Indian child, and the social worker wrote “[m]aybe” under the space for indicating eligibility for ICWA. The report filed before mother’s jurisdiction hearing stated that ICWA was inapplicable, but it did not otherwise address the ICWA issue. All subsequent reports in the record also stated only that ICWA was inapplicable.

A few days after the jurisdictional hearing involving her, mother filed an ICWA-020 form, “Parental Notification of Indian Status.” On the form, she checked the box indicating that she “may have Indian ancestry,” listed the Cherokee and Sioux tribes, and provided the name under which her paternal grandfather was registered in Indiana and the name of a great-grandfather. An ICWA-020 form with father’s name on it appears in the record, but it is blank and is dated three days after Josiah was first detained, before father’s paternity had been established. There is no indication that father ever received this form, and it was never filed.

At the July 2011 hearing, the juvenile court determined that ICWA did not apply to the case. In doing so, the court left blank the box for indicating that “[v]oir dire of [parents] regarding Indian ancestry” had occurred. Both parents were present at that hearing, but the transcript is not part of the record before us. Nowhere in the record is there any indication that the court asked either parent about Indian ancestry, ordered the Agency to do so, or made any other ICWA-related findings or orders.

Over the next several months, mother made progress toward reunification with Josiah. At the six-month- and 12-month-review hearings, the juvenile court ordered that both her reunification services and her visitation with Josiah continue. The Agency’s 18-month-review report recommended that Josiah be returned to mother, and the court so ordered at the September 2012 review hearing.

Less than three months later, mother failed to retrieve Josiah from child care, and his child-care provider notified the Agency. The Agency learned that mother had left the transitional-housing program where she had been living with Josiah. Unable to locate her, the Agency filed a supplemental petition under section 387 for a more restrictive placement. Josiah was detained and returned to his previous foster parents.

At the January 2013 jurisdictional hearing, mother submitted on the supplemental petition. The juvenile court terminated her reunification services and set a section 366.26 hearing to consider termination of parental rights. In May, after the section 366.26 hearing was continued, the Agency filed a section 388 petition seeking to discontinue visitation between parents and Josiah. The hearing on this petition was continued to the same day as the section 366.26 hearing.

A few days before the section 366.26 hearing, J.W. filed a petition on brother's behalf under section 388, subdivision (b) requesting that the juvenile court appoint counsel and order visitation between Josiah and brother. J.W.'s declaration filed with the petition stated that Josiah and brother had enjoyed frequent visits in the past, but that visits had stopped after Josiah was removed from mother's care the second time. The declaration stated that brother "asks about [Josiah] every single day . . . [and] asks . . . when he is going to be able to see [him] and says how much he loves him." The same day, mother filed a motion to continue the section 366.26 hearing so that brother could be appointed counsel and pursue his request for further visits with Josiah.

In July 2013, a hearing was held on the termination of parental rights, the Agency's petition to deny parents further visitation with Josiah, brother's petition for appointment of counsel and visitation with Josiah, and mother's motion for a continuance. The juvenile court first heard argument on brother's petition. It denied his request for counsel, stating that this was not "the time to appoint an attorney." It also effectively denied mother's request for a continuance because mother's counsel had earlier conceded that the request was moot if the court did not appoint counsel for brother.

As to brother's request for visitation with Josiah, however, the juvenile court was "not prepared to make any orders." Instead, it stated, "[Visitation] is something that we need to discuss and be aware of. And I would like the [Agency] to pursue that. I mean, [brother] came [to court today] and definitely he really wants to have an opportunity to meet up with [Josiah]. . . . And I also would like to see the sibling relationship continue. But there has to be . . . a method to do it correctly and to protect the interests of the minor and also [brother] as well as the rest of the family." The court also concluded that the section 366.26 hearing could proceed even though the siblings' visitation was unresolved.

After the ruling on brother's petition, mother "voice[d] her objection on the record" to termination of parental rights but decided not to go forward with a contested hearing. The juvenile court then terminated the parental rights of mother, father, and "any unknown fathers."

Finally, the juvenile court heard argument on the Agency's petition to discontinue parents' visits with Josiah. The court ruled that parents would have no further visitation with Josiah, but it permitted mother to write a goodbye letter to him, to be shared with the prospective adoptive mother at the social worker's discretion.

Mother filed a timely notice of appeal.

II. DISCUSSION

A. *The Agency and the Juvenile Court Failed to Satisfy Their ICWA-Related Duties.*

Mother contends that the Agency and the juvenile court failed to satisfy the obligations of ICWA and related state law. We agree.

We begin by discussing our standard of review and the applicable law. We review the juvenile court's determination that ICWA is inapplicable for substantial evidence, which requires us to review "factual findings in the light most favorable to the . . . order" and to "indulge in all legitimate and reasonable inferences to uphold [it]." (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.) An order "is not supported by substantial evidence," however, "if it is based solely upon unreasonable inferences, speculation[,] or

conjecture.” (*Ibid.*) “Deficiencies in ICWA inquiry and notice may be deemed harmless error when, even if proper notice had been given, the child would not have been found to be an Indian child.” (*In re D.N.* (2013) 218 Cal.App.4th 1246, 1251.)

The purpose of ICWA is “to protect the best interests of Indian children and to promote the stability and security of Indian tribes.” (25 U.S.C. § 1902.) “ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource.” (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) To further these goals, tribes are entitled to take jurisdiction over or intervene in state dependency proceedings. (25 U.S.C. § 1911(a) & (c).) “Of course, [a] tribe’s right to assert jurisdiction over [a] proceeding or to intervene in it is meaningless if the tribe has no notice that the action is proceeding.” (*In re Junious M.* (1983) 144 Cal.App.3d 786, 790-791.) ICWA therefore requires notice “where the [juvenile] court knows or has reason to know that an Indian child is involved.” (25 U.S.C. § 1912(a); see § 224.2; Cal. Rules of Court, rule 5.481(b).³)

In addition, state law imposes on both the juvenile court and the county welfare agency “an affirmative duty to inquire whether a dependent child is or may be an Indian child.” (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848; § 224.3, subd. (a); rule 5.481(a).) If the agency or the court “knows or has reason to know that an Indian child is involved, the social worker . . . is required to make further inquiry regarding the possible Indian status of the child” to facilitate the provision of notice. (§ 224.3, subd. (c); see also *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1200.) An “Indian child” is any unmarried minor who “is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (25 U.S.C. § 1903(4).) Among the circumstances that “may provide reason to know that the child is an Indian child” is when a relative provides information that “one or more of

³ All further rule references are to the California Rules of Court.

the child's biological . . . great-grandparents are or were a member of a tribe.” (§ 224.3, subd. (b)(1); see also rule 5.481(a)(5).)

With these standards and principles in mind, we turn to the parties' specific claims.

1. Mother has not waived her ICWA claims.

The Agency initially argues that mother has waived her ICWA claims by failing to object below or to appeal from the July 2011 dispositional order. In making this argument, the Agency primarily relies on *In re Pedro N.* (1995) 35 Cal.App.4th 183, which held that a mother had waived her challenge to the sufficiency of notice provided to a particular tribe by failing to raise the issue in a timely appeal from an earlier order. (*Id.* at pp. 188-190.) We agree with the many courts declining to follow *Pedro N.* that “it would be contrary to [ICWA's] terms . . . to conclude . . . that parental inaction could excuse the failure of the juvenile court to ensure that notice . . . was provided to the Indian tribe[s] named in the proceeding.”⁴ (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 736-739 [parents did not waive claim where they reported heritage in particular tribe but no notice ever sent]; see, e.g., *In re B.R.* (2009) 176 Cal.App.4th 773, 779; *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 251, 259-261.) We also conclude that parental inaction does not waive a claim that the duty of inquiry was unfulfilled, because that duty also protects tribes' interests in receiving notice. (See *In re S.B.*, *supra*, 130 Cal.App.4th at p. 1160.) We conclude that mother has not waived her ICWA-related claims, and we therefore turn to consider their merits.

⁴ The Agency attempts to distinguish these authorities by claiming that the relevant tribes determined that mother had no Indian status in connection with brother's case, so that no tribal interests would be affected if we deem the claims waived. (See *In re S.B.* (2005) 130 Cal.App.4th 1148, 1159 [rationale that parent cannot waive ICWA's notice provisions because they protect tribe's interests inapplicable where tribe has appeared but has not challenged previous proceedings].) As we explain below, however, we are unable to rely on any ICWA-related determinations involving brother because we have no evidence of them.

2. The Agency failed to satisfy its ICWA-related inquiry and notice duties related to mother.

On her ICWA-020 form, mother indicated that she “may have Indian ancestry,” listed the Cherokee and Sioux tribes, and provided the name under which her paternal grandfather was registered in Indiana and the name of a great-grandfather. This information was sufficient to trigger the Agency’s duty to inquire further and to provide notice. (*In re Damian C.* (2009) 178 Cal.App.4th 192, 199 (*Damian C.*) [information that minor’s great-grandfather “was Yaqui or Navajo” triggered those duties].)

The Agency urges us to conclude that “there was no reason to believe that Josiah was an Indian child” by pointing to “a prior uncontested finding in [brother]’s dependency [case] that ICWA was inapplicable.” It finds fault with mother’s failure to “contend that the notices sent in [brother]’s dependency [case] were insufficient or that a proper inquiry was not previously made,” to dispute “that [brother]’s case was in the same county as Josiah’s, . . . [and] that multiple tribes were previously noticed,” and to challenge “the tribes’ findings that neither [mother] nor [brother] qualified as members of any tribe, and . . . the juvenile court’s prior finding . . . that [brother] was not an ‘Indian child’ under ICWA.”

This argument is unavailing because the record before us contains virtually no information about ICWA-related notifications or determinations regarding brother. For purposes of our review, “if it is not in the record, it did not happen.” (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364.) The only ICWA-related information concerning brother is the statement in the initial detention report that “[m]ultiple tribes were noticed when [brother] was a dependent and there was no finding of Indian status with regard to the mother.” This remark falls far short of establishing what information about Indian heritage was provided by mother or others, what tribes, if any, were noticed, whether any such notices were proper and adequate, whether any tribes responded to notices, and how the previous court ruled on the ICWA issues. This lack of evidence distinguishes this case from the decisions upon which the Agency relies. (Cf. *In re Z.N.* (2009) 181 Cal.App.4th 282, 298-302 [taking judicial notice of ICWA

materials from half-siblings' dependency cases to conclude that any error in failure to provide notice in minor's case was harmless]; *In re E.W.* (2009) 170 Cal.App.4th 396, 399-400 [notices' identification of only one of two minors in same dependency case was harmless because children had same father and tribes determined child identified was not an Indian child].)

There is no evidence in the record that either the duty to inquire further or to provide notice was discharged in this case. The Agency argues that substantial evidence nevertheless supports the juvenile court's determination that ICWA was inapplicable because the jurisdiction/disposition report stated that the statute did not apply. The Agency relies on *In re S.B.*, *supra*, 130 Cal.App.4th 1148. In that case, the Court of Appeal held that substantial evidence supported the determination that ICWA was inapplicable because the box in the section 300 petition for indicating whether ICWA applied was not checked and statements in the social worker's reports represented that ICWA did not apply, permitting the inference that inquiry was made. (*Id.* at pp. 1160-1161.) In *S.B.*, however, the issue was whether the duty to make an *initial* inquiry was discharged, before there was " 'any information or suggestion that the child might have Indian heritage.' " (*Id.* at pp. 1161-1162; see also *In re Aaliyah G.* (2003) 109 Cal.App.4th 939, 942.) In contrast, here the social worker originally stated that ICWA might apply, and mother filed an ICWA-020 form indicating that she had Indian heritage. Mother's information provided reason to believe that Josiah may be an Indian child, and it triggered the Agency's duty to inquire further and to provide notice. (See *Damian C.*, *supra*, 178 Cal.App.4th at p. 199; see also *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539.) In these circumstances, it is not reasonable to infer that ICWA-related duties were satisfied based on the social worker's bare assertion that ICWA was inapplicable.

The other decisions cited by the Agency are also inapposite. In *In re E.W.*, *supra*, 170 Cal.App.4th 396, the issue was whether the juvenile court made an implicit finding that ICWA did not apply, not whether any such finding was supported by substantial evidence. (*Id.* at pp. 403-404.) Moreover, the social worker's reports in that case not only "not[ed] that ICWA '[did] not apply' " but also "specifically discussed the ICWA

issue and included documentation of the notices sent and the negative responses received from the tribes.” (*Id.* at p. 404.) In contrast, here the initial detention report stated that ICWA might apply and subsequent reports contained *no* further mention of the issue except the statement that ICWA did not apply.

In re Levi U. (2000) 78 Cal.App.4th 191 involved whether a social worker’s assertion that notice had been sent to the Bureau of Indian Affairs (BIA) without “evidence of the actual notice sent, proof of service of the notice, and a response from BIA” was sufficient evidence that ICWA did not apply. (*Id.* at p. 195.) The minor’s relatives had provided information suggesting possible Indian heritage but did not identify a particular tribe, meaning that only BIA could be noticed. (See *id.* at pp. 194, 197; see also § 224.2, subd. (a).) The Court of Appeal concluded that BIA’s failure to respond constituted a finding that the minor was not eligible for membership in a tribe and that the juvenile court had no further duty to inquire because there was no additional information “on which to predicate the belief [the] child [was] an Indian under [ICWA].” (*Levi U.*, at p. 198.) But here there is no evidence that any follow-up was undertaken on the information suggesting Josiah might be an Indian child, much less that any notices were sent.

Finally, the Agency argues that any error was harmless. It primarily relies on the alleged previous determination that brother was not an Indian child, which we do not consider for the reasons given above. Inexplicably, it also contends that mother “has never claimed that Josiah is a member of or may be eligible for membership in an Indian tribe, . . . that she herself was a member of a tribe[,] . . . [or] that she in fact has any [Indian] ancestry” and that there is “no evidence that [she] held herself out to be [Indian].” But mother’s ICWA-020 form expressly stated that she “may have Indian ancestry” and identified specific tribes and registered relatives. To the extent the Agency is suggesting that mother had the burden to provide additional information either below or on appeal, it is incorrect: the information mother provided was sufficient to trigger the duties of further inquiry and notice. (*Damian C.*, *supra*, 178 Cal.App.4th at p. 199.) Those duties were not fulfilled. We therefore conditionally reverse the order terminating

mother's parental rights and remand for compliance with the applicable inquiry and notice requirements. (See *In re Justin S.* (2007) 150 Cal.App.4th 1426, 1432-1433, 1437-1438.)

3. The Agency and the juvenile court failed to satisfy their duty of inquiry related to father.

Mother also argues that the Agency and the juvenile court failed to fulfill their duty to inquire of father whether Josiah is an Indian child. Again, we agree.

The Agency argues that the ICWA issue is moot as to father because he did not appeal from the order terminating parental rights and the order is final as to him. A parent has standing to raise ICWA issues, however, even if the alleged Indian heritage is through the other parent and the other parent has not appealed. (*In re B.R.*, *supra*, 176 Cal.App.4th at pp. 778-780; *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 337, 339.)

There is no evidence in the record that either the Agency or the juvenile court attempted to determine whether father had Indian heritage. The Agency does not contend otherwise. Rather, effectively conceding that the duty of inquiry as to father was breached, the Agency argues that the error was harmless. It relies on two decisions concluding the failure to inquire is not prejudicial where a parent never asserts that, had he or she been asked, he or she “would have indicated that the child did (or may) have [Indian] ancestry.” (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431, italics omitted; accord, *In re H.B.*, *supra*, 161 Cal.App.4th at p. 122.) But both cases involved the failure of the appealing parent to make an offer of proof about his or her *own* ancestry. (*Rebecca R.*, at p. 1431; *H.B.*, at p. 122.) Because the parents in those cases were before the appellate court, “[t]here [was] nothing whatever which prevented [them] . . . from removing any doubt or speculation [about Indian ancestry through] . . . an offer of proof or other affirmative representation that, [if] asked, [they] would have been able to proffer some Indian connection sufficient to invoke the ICWA.” (*Rebecca R.*, at p. 1431; see *H.B.*, at p. 122.) In contrast, father is not before this court, and there is no evidence in the record to suggest that mother has any knowledge of his

ancestry. In these circumstances, we decline to find the error harmless, and we remand on this basis as well. (See *In re J.N.* (2006) 138 Cal.App.4th 450, 461.)

B. The Juvenile Court's Recognition that Mother Might Have a Relationship with Josiah in the Future Does Not Justify Reversal of the Order Terminating Her Parental Rights.

Mother argues that the order terminating her parental rights must be reversed because the juvenile court failed to recognize the order's finality and because the order conflicts with what she characterizes as the court's order for continued visitation between her and Josiah. We reject this claim.

Initially, the Agency argues that we lack jurisdiction to review any ruling other than the order terminating parental rights because mother's notice of appeal only states that it is "from the findings and orders of the court. . . . [¶] July 29, 2013: Court ordered termination of parental rights." " [N]otices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.' " (*In re Joshua S.* (2007) 41 Cal.4th 261, 272; see also rule 8.100(a)(2).) Here, the order terminating parental rights includes a section for "[o]ther" orders, which states, "THE COURT GRANTS THE 388 MOTION FILED BY THE [AGENCY] ON 5-24-13. NO VISITATIONS FOR THE PARENTS" and sets forth the ruling permitting a goodbye letter. We therefore construe the notice of appeal from the order to encompass the visitation-related rulings. (See rule 8.100(a)(2) ["The notice is sufficient if it identifies the particular judgment or order being appealed".])

We review the order terminating mother's parental rights for substantial evidence. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 423; *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408.) And we review the order granting the Agency's section 388 petition to end mother's visitation with Josiah for an abuse of discretion. (*In re D.B.* (2013) 217 Cal.App.4th 1080, 1088-1089.)

Mother's argument is primarily based on statements of the juvenile court during the July 2013 hearing. After mother decided not to contest the termination of her parental

rights, the court recognized her effort to form a good relationship with Josiah’s foster mother and told her to “look at it as Josiah is in a really good place right now with somebody that has the resources and the capability of raising him until such time that you are in a good place yourself where you can have a relationship with [him]. ¶ . . . ¶ He just turned four. And he has still got a whole life ahead and you will have the opportunity to foster a relationship with him. So you have got to hold on to that hope, all right?” In addition, in ruling that mother could write a goodbye letter to Josiah, the court told her, “[Y]ou can also write a letter that you can keep. And at some point later on when Josiah is more able to understand what is going on and when you visit him again, you can show it to Josiah and say this is the letter I wrote to you and this is how I want to share with you how much I love you. . . . ¶ . . . I think you should keep the letter for yourself so that you can hold on to it and read it to him when the chance arises.”

“In dependency proceedings, an order terminating parental rights is not only conclusive and binding upon the birth parents, but also effectuates a complete and final legal termination of the parental relationship. [Citations.] The parent-child relationship enjoys no legal recognition after termination of parental rights[,] . . . and the court has no authority to essentially modify a termination order by granting visitation to the parent.” (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1391.) In *In re S.B.* (2008) 164 Cal.App.4th 289, on which mother primarily relies, the Court of Appeal reversed an order terminating parental rights for lack of substantial evidence. Although the father had met a statutory exception to termination of parental rights based on his maintenance of regular contact with the minor (see § 366.26, subd. (c)(1)(B)(i)), the juvenile court had “based its decision to terminate parental rights in part on the [minor’s] grandparents’ willingness to allow [father] to continue to visit [minor].” (*S.B.*, at pp. 296-298, 300-301.) The Court of Appeal concluded that “a parent should [not] be deprived of a legal relationship with his or her child on the basis of an unenforceable promise of future visitation by the child’s prospective adoptive parents.” (*Id.* at p. 300; accord, *In re C.B.* (2010) 190 Cal.App.4th 102, 128 [where parent-child relationship exception is established, “[a] court cannot nevertheless terminate parental rights based upon an

unenforceable expectation that the prospective adoptive parents will voluntarily permit future contact between the child and a biological parent, even if substantial evidence supports that expectation”].)

In re S.B., supra, 164 Cal.App.4th 289 does not help mother because the record does not support her factual premise that the juvenile court believed that future visitation would occur, much less that it terminated her parental rights because of such a belief. Mother identifies several points in the proceedings that she contends show that the court did not recognize the finality of the order terminating parental rights, but we do not agree with her interpretation of any of these circumstances. She claims the court failed to advise her of her right to appeal and of the consequences of the order, but she was served with a notice of her right to appeal, and she does not provide any authority establishing that the court had any duty to so advise her in any event. (See § 366.26, subd. (1)(3)(A) [requiring notification of right to file petition for extraordinary writ to challenge setting of section 366.26 hearing]; rule 5.590(a) [requiring notification of right to appeal certain orders made after contested hearings].) She also claims the court’s consideration of the Agency’s section 388 petition after termination of parental rights, when the petition was effectively moot, shows that the court did not understand the finality of the order terminating parental rights. But the argument on the petition involved only whether mother should be allowed “one more visit in order to say goodbye to her child” or be permitted to write a goodbye letter to Josiah, not whether mother should have ongoing visitation. Finally, mother points to the court’s statements about the potential for her and Josiah to have a relationship in the future, but these statements merely recognized the possibility that the prospective adoptive family would permit mother to have contact with Josiah in the future, not that mother had any *right* to such contact.

Mother also characterizes the juvenile court’s statements as an “order for visitation between [her] and [Josiah]” and contends that the order terminating her parental rights must be reversed because it conflicts with that order. We disagree that the court’s statements about the possibility of future contact between mother and Josiah constituted a visitation order. As we have explained, the statements indicated that the prospective

adoptive family might some day allow mother to have a relationship with Josiah. Moreover, earlier in the hearing, the court specifically recognized that “once parental rights and responsibilities are terminated, then the court can no longer order visitations,” and the written order states that the parents will have no further visitation.⁵ We conclude that the court did not rely on the possibility of visitation between mother and Josiah to terminate parental rights or order that such visitation occur, and we therefore decline to reverse the order terminating mother’s parental rights on this basis.

C. Mother Lacks Standing to Challenge the Denial of Brother’s Petition Seeking Appointment of Counsel and Visitation with Josiah.

Mother also challenges on several grounds the juvenile court’s denial of brother’s petition, brought under section 388, subdivision (b), for appointment of counsel and visitation with Josiah. We conclude that she has no standing to raise these issues.⁶

To obtain review of a dependency ruling, a parent must establish that she is “a ‘party aggrieved.’ ” (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.) “To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the [juvenile] court’s decision,” and “[a] nominal interest or a remote consequence of the ruling” does not suffice. (*Ibid.*) Because a “ ‘parent’s primary interest in dependency is usually reunification,’ ” “a parent is aggrieved by a

⁵ The parties cite decisions taking different stances on the issue whether a juvenile court’s written order or oral pronouncement controls when the two conflict. (Compare *In re A.C.* (2011) 197 Cal.App.4th 796, 799-800 [oral statements about visitation controlled over box checked on judgment] and *In re Maribel T.* (2002) 96 Cal.App.4th 82, 86 [modifying custody order to conform to court’s oral pronouncement] with *In re Jerred H.* (2004) 121 Cal.App.4th 793, 798, fn. 3 [written order terminating parental rights as to all persons claiming to be minor’s father controlled over court’s silence on issue at hearing] and *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756 & fn. 1 [written visitation order controls over oral pronouncement].) We need not decide this issue because we conclude there is no conflict between the court’s written order and its oral statements.

⁶ Although we conclude that we do not have jurisdiction to consider this claim because mother lacks standing, we reject the Agency’s argument that the ruling on brother’s petition is not before us because the notice of appeal did not identify it. (See *In re Madison W.* (2006) 141 Cal.App.4th 1447, 1449-1451 [construing notice of appeal from order terminating parental rights to include ruling on parent’s section 388 petition].)

juvenile court order that injuriously affects the parent-child relationship.” (*In re Paul W.* (2007) 151 Cal.App.4th 37, 62.) “[T]he mere fact a parent takes a position on a matter at issue . . . that affects his or her child,” however, does not establish “standing to challenge an adverse ruling on it.” (*Carissa G.*, at p. 736.) “We liberally construe the issue of standing and resolve doubts in favor of the right to appeal.” (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 999.)

Mother argues that she has standing to contest the ruling on brother’s section 388 petition under decisions involving the sibling-relationship exception to termination of parental rights. (§ 366.26, subd. (c)(1)(B) & (v).) In 2002, section 366.26 was amended to prohibit the termination of parental rights where there is “a compelling reason for determining that termination would be detrimental to the child” because it would cause “substantial interference with a child’s sibling relationship.” (§ 366.26, subd. (c)(1)(B), & (v); Stats. 2001 ch. 747, § 3.) Under earlier case law, a parent lacked “standing to raise an issue related to the minor’s right to visit his siblings” because “[t]he interest of siblings or other relatives in their relationship with the minor is separate from that of the parent.” (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703; see, e.g., *In re Daniel H.* (2002) 99 Cal.App.4th 804, 809-810; *In re Nachelle S.* (1996) 41 Cal.App.4th 1557, 1560-1561; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 425.) Subsequent decisions have held that parents have standing to assert the statutory sibling-relationship exception in opposing termination of parental rights. (See, e.g., *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 949-951.) But mother does not contend that the sibling-relationship exception prevented termination of her parental rights.

Other decisions have held more broadly that a parent “has standing to raise issues of sibling visitation affecting the applicability of” the sibling-relationship exception (*In re Valerie A.*, *supra*, 152 Cal.App.4th at pp. 999-1000), reasoning that sibling “ ‘relationships directly impact the parent’s interest in reunification, an interest that can be kept alive merely by avoiding adoption.’ ” (*In re Asia L.* (2003) 107 Cal.App.4th 498, 514; see also *In re Daniel H.*, *supra*, 99 Cal.App.4th at pp. 811-812 [holding parent had no standing to raise sibling-visitacion issue but suggesting different outcome had sibling-

relationship exception been in effect during proceedings at issue].) Mother stated in her motion for a continuance that brother's section 388 petition would permit him to "take a position with regard to termination of parental rights," and at the hearing her counsel also suggested the possibility that the sibling-relationship exception might apply. Mother ultimately did not contest the termination of her parental rights, however, and on appeal she does not argue that the denial of brother's petition affects her interests based on the exception. Because the exception is not at issue here and mother has not identified any other interest of hers that may be impacted by "posttermination visitation between [the] siblings," we conclude that she lacks standing to raise the issue. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 405 [pre-amendment decisions still "valid" where sibling-relationship exception is inapplicable]; see also *In re K.C.* (2011) 52 Cal.4th 231, 238 [parent contesting termination of parental rights does not have standing to appeal concurrent placement order unless its reversal would "advance[] the parent's argument against terminating parental rights"].)

We also conclude that mother has no standing to challenge the juvenile court's refusal to appoint counsel for brother. Her argument to the contrary fails under *In re Valerie A.*, *supra*, 152 Cal.App.4th 987. In that case, the Court of Appeal held that a mother had standing to assert the sibling-relationship exception to termination of parental rights but did not have standing to appeal the denial of her request under section 388, subdivision (b) that the juvenile court appoint counsel for her daughter, who was not a dependent, to enable the daughter to assert her interests as the sibling of the dependent minors at issue. (*Valerie A.*, at pp. 995, 1000.) The Court of Appeal concluded that the mother "d[id] not show more than a nominal interest in the consequence of the court's denial of her motion. Any prejudicial effect on [her] interest in the[] proceedings [was] merely speculative. [The daughter]'s interest in her sibling relationships [was] independent from [the mother]'s interest in avoiding termination of her parental rights, and [the daughter's] interest [could] be considered even when parental rights [were] terminated in the siblings' case." (*Id.* at p. 1000.) Mother does not address *Valerie A.*, and the decisions on which she relies are inapposite. (*In re Noreen G.*, *supra*,

181 Cal.App.4th at pp. 1367, 1378 [right to counsel of minors involved in probate proceeding to terminate their parents' parental rights]; *In re Devin M.* (1997) 58 Cal.App.4th 1538, 1540-1542 [parent had no standing to challenge minor's placement; appointment of counsel not at issue]; *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 565 [parent had standing to assert right to counsel of dependent minors]; *In re Patricia E.* (1985) 174 Cal.App.3d 1, 6 [same as to one minor], disapproved on other grounds in *In re Celine R.* (2003) 31 Cal.4th 45, 60; *In re David C.* (1984) 152 Cal.App.3d 1189, 1206 [same].)

Finally, mother claims that “[t]he rights of both siblings to assert their relationship (including [brother]’s request for counsel to help him do so), and to visit one another can only be protected” if she has standing. Brother could have appealed the denial of his petition—even though he is not a party—but did not. (See *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034-1035 [nonparty grandmother had standing to appeal placement order based on statutorily-protected interest in relationship with grandson].) Mother lacks standing to raise issues affecting only those who did not appeal. (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.)

III. DISPOSITION

The order terminating mother’s parental rights is conditionally reversed. The matter is remanded to the juvenile court with directions to vacate its finding that ICWA does not apply and to order the Agency to inquire into father’s Indian heritage, to further inquire into mother’s Indian heritage, and to provide all required notices. If, after proper inquiry and notice, no tribe determines that Josiah is an Indian child within the meaning of ICWA, the court shall reinstate the order terminating mother’s parental rights. If Josiah is determined to be an Indian child within the meaning of ICWA, the court shall proceed in compliance with ICWA and related state requirements. In all other respects, the order terminating mother’s parental rights is affirmed. The ruling granting the Agency’s section 388 petition is affirmed. The appeal from the ruling on brother’s section 388 petition is dismissed for lack of standing.

Humes, J.

We concur:

Ruvolo, P.J.

Reardon, J.