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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B262538  
(Los Angeles County  
Super. Ct. No. CK99902)

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

F.R. et al.,

Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Philip Soto, Judge. Dismissed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendants  
and Appellants.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant  
County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff  
and Respondent.

F.R. (foster mother) and E.W. (foster father) appeal from the juvenile court's order of October 30, 2014 denying them status in the proceedings as de facto parents of Violet M., a dependent child of the court. The foster parents contend the court abused its discretion. They also purport to appeal from an order made December 5, 2014 removing Violet from their care. We conclude the challenge to the October 30 order is moot and an appeal from the December 5 order does not lie. Therefore, we dismiss the appeal.

### **BACKGROUND<sup>1</sup>**

Violet was born in October 2012. In June 2013, she was placed in the foster parents' home and the Department of Children and Family Services (department) filed a petition under Welfare and Institutions Code section 300 alleging she came under the Juvenile Court Law.<sup>2</sup> She was declared a dependent of the court on July 22, 2013.

The department kept the court informed about the child's progress. Violet thrived in the positive living environment of the foster parents' home, was appropriately bonded, and experienced no behavioral or emotional problems. The maternal grandmother wanted custody of Violet. Both the foster parents and maternal grandmother wanted to adopt her. The department reported in detail the foster parents concerns about maternal grandmother's ability to care for the child and fears that placement in maternal grandmother's home would compromise the child's welfare.

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<sup>1</sup> The clerk's transcript is limited to the records that the juvenile court ordered released to appellate counsel for purposes of the appeal.

<sup>2</sup> Hereinafter, all statutory references will be to the Welfare and Institutions Code, unless noted otherwise.

In a petition filed July 14, 2014 under section 388, the foster parents requested permanent placement of the child, on the grounds Violet was making wonderful progress in their care, maternal grandmother was not able to meet the child's needs, and changing the placement would harm the child. The court denied the petition.

The foster parents were present with Violet at the September 24, 2014 review hearing, under section 366.21, subdivision (f) [12-month review hearing]. The Department reported that, following the completion of an assessment pursuant to the Adoption and Safe Families Act of 1997 (P.L. 105-89), the department approved maternal grandmother to adopt Violet. The court continued the matter to December 5, 2014 for a section 366.22 review hearing [18-month review hearing].

On October 30, 2014, the foster parents filed a request to be appointed Violet's de facto parents.<sup>3</sup> They stated they spend all day every day with Violet, taking her to mommy and me classes, the playground, and other places for recreation and enrichment, and bringing her with them on family outings. They have medical, educational, behavioral, and other information that others may not have as well as information about the progress Violet was making in their care. The juvenile court denied the request on October 30, 2014. The foster parents also filed a request to be designated the child's prospective adoptive parents, which was denied.

The foster parents filed a timely notice of appeal of the October 30, 2014 order denying their request for de facto parent status.

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<sup>3</sup> “‘De facto parent’ means 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.” (Cal Rules of Court, Rule 5.502(10).) (Hereinafter, all references to rules are to the California Rules of Court.)

The foster parents filed a Caregiver Information Form for the December 5, 2014 hearing.<sup>4</sup> They made an impassioned plea to adopt Violet, supported by arguments and facts showing it was in Violet's best interest to be adopted by them and it would be damaging to Violet to be adopted by maternal grandmother.

In the department's report for the December 5, 2014 hearing, the worker informed the court that the foster parents reported visitation with maternal grandmother continued to be detrimental to Violet. The foster parents believed maternal grandmother's care of Violet would be compromised by having to care for three infant children at the same time.

The foster mother was present at the hearing on December 5, 2014. Noting that maternal grandmother had been approved for adoption, the court ordered Violet placed in the home of maternal grandmother, where Violet's sibling was already living.<sup>5</sup> The hearing was continued to January 12, 2015.

On October 13, 2015, the foster parents filed a petition under section 388 asking the court to order a hearing on their request that they, not maternal

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<sup>4</sup> The form states that caregivers may submit written information to the court and may attend review and permanency hearings.

<sup>5</sup> Section 361.3 provides: "(a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative[.]" "Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) "During the reunification period, the preference applies regardless of whether a new placement is required[.]" (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 795.)

grandmother or aunt, be granted adoption of Violet.<sup>6</sup> They stated that, on June 17, 2015, the court ordered the case moved to adoption. They stated the maternal grandmother was ill with cancer and having difficulty recovering from surgery. The maternal aunt could not care for the children and was considering moving in with the mother, who lacked patience and became flustered easily, to care for the children. The court granted the foster parents' request for a hearing, to be held on November 17, 2015. The foster parents were present and represented by counsel at the hearing. The foster mother testified. The section 388 petition and the department's response were admitted into evidence.

Finding the requested change of order was not in the best interest of the child, circumstances had not changed, and the child was in placement with relatives who were providing a safe and stable home, the court denied the petition. The court ordered that the foster parents be considered for respite care if appropriate and necessary. The matter was continued to February 10, 2016 for a permanency hearing under section 366.26.

## **DISCUSSION**

### *1. Denial of Request for De Facto Parent Status*

The foster parents contend the order denying their request for de facto parent status was an abuse of discretion. The department contends the issue was rendered moot by subsequent events. We find that, as a result of subsequent events, no

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<sup>6</sup> On March 7, 2016, we granted respondent's request to take judicial notice of the October 13, 2015 section 388 petition and the minute order of November 17, 2015. (Evid. Code, §§ 451, subd. (a), 452, subd. (d); *In re Josiah Z.* (2005) 36 Cal.4th 664, 676 [post judgment evidence may be considered on appeal to determine whether the appeal is moot].)

effective relief can be given. Therefore, the contention is moot. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.)<sup>7</sup>

Rule 5.534(e) provides: “On a sufficient showing, the court may recognize the child’s present or previous custodian as a de facto parent and grant him or her standing to participate as a party in the dispositional hearing and any hearing thereafter at which the status of the dependent child is at issue. The de facto parent may: [¶] (1) Be present at the hearing; [¶] (2) Be represented by retained counsel or, at the discretion of the court, by appointed counsel; and [¶] (3) Present evidence.”

“The key reason for affording de facto parents standing to appear and participate is so they may provide critical information that assists the court in determining what disposition is best for the child. [Citation.] As explained in *In re B. G.* [(1974) 11 Cal.3d 679, 693]: ‘The juvenile court in a dispositional hearing must undertake “a judicious appraisal of all available evidence bearing on the child’s best interests” including an evaluation of the relative merits of alternative custody awards. [Citation.] The presence of de facto parents will aid the court in that endeavor; the views of such persons who have experienced close day-to-day contact with the child deserve consideration; moreover, an award of custody to

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<sup>7</sup> “When no effective relief can be granted, an appeal is moot and will be dismissed. [Citation.] “[T]he duty of this court . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” [Citation.] . . . “[W]hen, pending an appeal from the judgment of a lower court, and without any fault of the [respondent], an event occurs which renders it impossible for this court, if it should decide the case in favor of [appellant], to grant him [or her] any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. [Citations.]” (*Ibid.*)” (*In re Jessica K., supra*, 79 Cal.App.4th at pp. 1315-1316.)

such de facto parents is often among the alternate dispositions which the court must evaluate.” (In re A.F. (2014) 227 Cal.App.4th 692, 701.)

A grant of de facto parent status would have given the foster parents an opportunity to assist the court in determining the relative merits of alternative custody awards, by permitting them to be present and represented by counsel and to present evidence at hearings at which placement was an issue. While the appeal was pending, the court gave the foster parents that opportunity: it granted them a hearing on whether the foster parents, not the maternal grandmother, should be granted adoption. The court received evidence from the foster parents and the department on the relative merits of the custody alternatives and concluded an award of custody to the foster parents was not in Violet’s best interest. The requested relief having been granted by the trial court during the pendency of the appeal, there is no further relief we can give, and the contention is moot.

A de facto parent status determination is an exercise of discretion driven by the facts and circumstances of the case. (See rule 5.502(10).) The foster parents ask us to decide the issue even if we conclude it is moot. However, they have not shown the factual determination in this case raises an issue of continuing public importance or is a question capable of repetition yet evading review. (In re Yvonne W. (2008) 165 Cal.App.4th 1394, 1404.) Accordingly, we decline to exercise our inherent discretion to decide a moot issue.

## 2. *Subsequent Order*

The foster parents purport to appeal from a December 5, 2014 order placing Violet in maternal grandmother’s home. However, they did not appeal the order and the present appeal does not encompass the order. The notice of appeal states this is an appeal from the denial of the petition for de facto parent status on

October 30, 2014 “and any other appealable issues.” The notice also states that the only order being appealed is the October 30, 2014 denial of the petition. The notice does not refer to the December 5 hearing, the December 5 placement order, or any placement order.

As the foster parents did not appeal the December 5, 2014 placement order, jurisdiction does not lie to consider their challenge to it. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674 [when a notice of appeal has not been timely filed, “the appellate court . . . lacks all power to consider the appeal on its merits and must dismiss, on its own motion if necessary, without regard to considerations of estoppel or excuse”]; accord *Bourhis v. Lord* (2013) 56 Cal.4th 320, 329.)

Moreover, the foster parents lack standing to appeal the placement order, as they were not parties. (Code Civ. Proc., § 902 [“any party aggrieved may appeal”]; *In re Joseph G.* (2000) 83 Cal.App.4th 712, 715 [“only parties of record may appeal. [Citation.] A party of record is a person named as a party to the proceedings or one who takes appropriate steps to become a party of record in the proceedings”].) Having been denied the right to participate as a party when they were denied de facto parent status, the foster parents were not parties of record. (See *In re Miguel E.* (2004) 120 Cal.App.4th 521, 539 [persons who failed to be granted de facto parent status were not parties and, thus, had no standing to appeal the custody order].) They may appeal, as they did, the denial of de facto parent status but may not appeal a subsequent order. (See *In re Paul W.* (2007) 151 Cal.App.4th 37, 56 [denial of right to intervene].)

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**DISPOSITION**

The appeal is dismissed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.