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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re HOPE B., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. STEPHANIE B., Defendant and Appellant.	D061718 (Super. Ct. No. J517606C)

APPEAL from orders of the Superior Court of San Diego County, David B. Oberholtzer, Judge. Affirmed.

Stephanie B. appeals juvenile court orders terminating her parental rights and ordering a permanent plan of adoption for her daughter, Hope B. She also appeals an order denying her request to place Hope with the maternal grandmother (the grandmother). Stephanie contends she has standing to challenge the denial of placement

with the grandmother; the court erred by not placing Hope there in violation of the relative placement preference of Welfare and Institutions Code[1] section 361.3, subdivision (a); and the order terminating parental rights should be reversed because it will cause significant interference with Hope's relationship with her sibling, Devin W. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On February 10, 2011, the Orange County Social Services Agency petitioned on behalf of newborn Hope under section 300, subdivisions (b) and (j), based on Stephanie's drug abuse and her convictions for drug abuse related charges. The petition further alleged Stephanie's twin sons, born in 2009 while she was in prison, had medical needs Stephanie could not meet, and were taken into protective custody and placed in foster care. Stephanie's two other children also are not in her care.

Hope was placed with the grandmother and her partner, Ursula E. The grandmother was the legal guardian of Devin. Both the grandmother and Ursula have criminal records dating from 1988 to 1999 involving convictions for prostitution and substance abuse. They were granted criminal exemptions and child welfare history waivers and had a positive home evaluation for placement.

On March 28, 2011, the Orange County Superior Court found the allegations of the petition true. In May, the case was transferred to San Diego County. At the disposition hearing in July, the court removed custody from Stephanie, did not offer

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1 Statutory references are to the Welfare and Institutions Code.

reunification services, continued Hope in relative placement with the grandmother, and set a section 366.26 hearing.

Hope continued to live with the grandmother and Ursula. However, in October 2011, the social worker made an unannounced visit to the home and discovered a pipe with marijuana residue in it on the bathroom counter. Ursula said she had smoked the drug the night before and admitted smoking marijuana for the last two years when she wanted to relax or when her sciatica was bothering her. She disclosed a history of methamphetamine use. The Agency removed Hope from the home and she was placed in the same foster home as her twin siblings.

On December 2, 2011, the Agency petitioned under section 387 on Hope's behalf, alleging her placement with the grandmother was no longer appropriate because of drug use in the home. The grandmother claimed she was unaware that Ursula had been using drugs. Ursula showed the social worker a medical marijuana card that had expired in 2007.

The social worker reported Ursula appeared to have been Hope's primary caregiver when Hope lived with the grandmother and Ursula. Visits with the grandmother and Ursula were appropriate, but Hope had a difficult time leaving her foster mother. The social worker said Hope had a very good relationship with the twins. The foster parents were committed to adopting all three children.

Ursula tested positive for marijuana on November 1, 2011, and January 9, 2012, and had negative tests at other times. She provided Narcotics Anonymous sign-in sheets for February and March 2012. The grandmother had negative drug tests, but did not test on some of the days she was requested to do so.

At the hearing on the section 387 petition in January and April 2012, the social worker testified the grandmother and Ursula's home had been approved as a relative placement, but they had not begun the adoptive home study process. The social worker said the grandmother had lost parental rights to two of her children because of significant drug use, homelessness, exposing them to sexual activity and not providing food. She said although Ursula had initially denied using drugs, she then acknowledged she had been using marijuana for two years. Devin was not removed from the grandmother's home because he was not a dependent child, and he was 11 years old and better able to care for himself.

The grandmother testified she and Ursula had lived together for 12 years. She said she knew Ursula had used drugs in the past, but did not know she was smoking marijuana. She said she would have made Ursula leave the home if she had ever found her under the influence of a drug.

Ursula testified she worked the swing shift, so when the grandmother was at work she was Hope's primary caregiver in the morning before the daycare provider arrived. She said she had smoked marijuana at a friend's house because of spasms around her sciatic nerve, but she did not smoke in the home she shared with the grandmother. She

said the pipe the social worker found belonged to a friend, and she stopped smoking marijuana when Hope was removed.

Devin testified he felt safe and happy living in his grandmother's home. He said he missed Hope and wanted her to live with them again.

After considering the testimony, other evidence and argument by counsel, the court found the allegations of the section 387 petition true. It considered the evidence from the adjudication hearing on the section 387 petition and a further report and argument. It denied the request to return Hope to placement with the grandmother, determining it was in Hope's best interests to remain with her twin siblings in the foster home. The court then held the section 366.26 hearing and heard further argument. It terminated parental rights and referred Hope for adoption.

DISCUSSION

I

Stephanie contends the court erred by denying her request to place Hope with the grandmother in violation of the relative preference directive set out in section 361.3, subdivision (a). She argues she has standing to appeal this ruling on the ground that she is an aggrieved parent under section 361.3, subdivision (a)(2), which requires the court to consider a parent's wishes when determining whether placement with a relative is appropriate.

"Not every party has standing to appeal every appealable order. Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal." (*In re K.C.* (2011) 52 Cal.4th 231, 236.)

An aggrieved party is one who has a legally cognizable interest that the court's decision has injuriously affected in an immediate and substantial way, not nominal or remote. (*Ibid.; In re L.Y.* (2002) 101 Cal.App.4th 942, 948.)

When a child is removed from a parent's custody under section 361, the court is required to give preferential consideration to a relative's request for placement. (§ 361.3, subd. (a).) In making this consideration the court shall consider factors, including the wishes of the parent. (§ 361.3, subd. (a)(2).) However, the fact that a parent makes his or her wishes known to the court does not necessarily establish standing for the parent to challenge the court's ruling against the parent's wishes for relative placement. (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 736.)

The preference for relative placement facilitates the strong public policy for family reunification. This policy is not supported, however, when reunification will not occur or when placement with a relative will not assist in reunification. In *In re K.C., supra,* 52 Cal.4th at pages 237 to 238, the California Supreme Court ruled a father did not have standing to challenge the juvenile court's denial of placement with the child's grandparents because he challenged only the denial of relative placement, not termination of his parental rights. The high court contrasted this situation with that in *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053-1054, in which this court held the mother had standing to challenge the denial of a section 388 petition for a change of placement because it could affect the child's permanent plan and her parental rights. In *In re H.G.* (2006) 146 Cal.App.4th 1, 10 to 11, this court ruled the parent had standing to challenge an order removing a child from her grandparents. The Supreme Court noted

that in both of these cases the reviewing court had found the parent had standing to dispute not placing the child with the relative because resolution of the placement issue had the potential to alter the decision to terminate parental rights. (*In re K.C., supra,* 52 Cal.4th at p. 238.) The Court stated: "From these decisions we derive the following rule: A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*Ibid.*)

Placement with the grandmother would not advance Stephanie's argument that Hope's relationship with her sibling, Devin, applies to preclude termination of her parental rights. Stephanie had never cared for Hope and there was no possibility of reunification. Further, if the court ordered placement with the grandmother, Hope would be in same home as Devin, and Stephanie's argument regarding the sibling relationship exception to termination of parental rights would be unavailable. The relationship between the order denying placement with the grandmother and termination of Stephanie's parental rights does not confer standing on Stephanie to challenge the denial of her request for placement with the grandmother.

II

In any event, even if Stephanie does have standing to challenge the court's ruling, she has not shown the court abused its discretion by denying placement with the grandmother.

Before parental rights are terminated, the Agency cannot move a child from a court-ordered relative placement to a foster placement without filing a supplemental

petition and obtaining a dispositional order on the petition. (§ 387; *In re H.G., supra,* 146 Cal.App.4th at pp. 10-11; *In re A.O.* (2004) 120 Cal.App.4th 1054, 1060.) During the adjudicatory phase of the hearing on a supplemental petition, the court must decide whether the factual allegations of the petition are true and, if so, whether "the previous disposition has . . . been effective in the rehabilitation or protection of the child or, in the case of placement with a relative, . . . [whether] the placement is not appropriate in view of the criteria in Section 361.3. (§ 387, subd. (b).)" (*In re H.G., supra,* at pp. 10-11.) "In determining whether placement with a relative is appropriate, the . . . court shall consider, but shall not be limited to" the factors set out in section 361.3, subdivision (a). (§ 361.3, subd. (a).) "The linchpin of a section 361.3 analysis is whether placement with the relative is in the best interests of the minor." (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 862-863.) If the court finds the previous disposition is no longer effective or the placement with the relative is not appropriate, it then determines at a separate disposition hearing whether removal from the placement is required. (*In re H.G.*, at p. 12.)

We review the decision to remove a child from a relative caretaker under the substantial evidence test. (*In re A.O., supra*, 120 Cal.App.4th at p. 1061.) Substantial evidence supports the adjudicatory finding that placement with the grandmother was no longer appropriate because of drug use in the home and supports the dispositional decision to remove Hope from the grandmother's home. The social worker found a pipe and marijuana residue in the bathroom of the home, Ursula twice tested positive for marijuana and admitted smoking the drug to relax, and there was evidence that she was

Hope's primary caretaker. Substantial evidence supports the removal order. Further, the court did not abuse its discretion by denying Stephanie's request to return Hope to placement with the grandmother.

A determination "committed to the sound discretion of the juvenile court . . . should not be disturbed on appeal unless an abuse of discretion is clearly established." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. . . .' " (*Id.* at pp. 318-319, quoting *Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.)

Although the grandmother and Ursula had cared for Hope for the first 10 months of her life, there had been concerns about the home because of the grandmother's and Ursula's criminal histories. After the pipe with marijuana residue was found in the home and Ursula admitted smoking marijuana over the past two years, Hope was placed in the same foster home with her twin siblings, where she thrived and became bonded to the foster parents. The court carefully considered whether placement with the grandmother and Ursula or with her foster parents would serve Hope's best interests. The court stated:

> "On the side of the present caretaker, the unrebutted testimony is that—or the report—that Hope is thriving in that home; that she has a very close relationship with her two—her 2-year-old brothers, and that she has bonded with her present caretaker. The result is that we have two viable placements for Hope on balance.
>
> "Her best interest is maximized by placing her with the caretaker she's presently with. The relationship she will have with her twin brothers, I think, is going to be far different and far closer than the relationship she would have with Dev[i]n, who is a good deal older than she is. [¶] . . . [¶] I understand the preference for a relative. That is mitigated somewhat by the fact that she's going to be growing up with her two brothers who are relatives. But most

> important above all of these things is her stability and her bond with her present caretaker."

The court carefully considered the alternatives and determined that placement with the foster parents would serve Hope's best interests. There has been no showing of an abuse of discretion.

III

Stephanie asserts the court erred by terminating her parental rights because it would cause a significant interference with Hope's sibling relationship with Devin. Assuming Stephanie has preserved this issue for appeal, she has not shown error. Under section 366.26, subdivision (c)(1)(B)(v), if the court finds the child will be adopted within a reasonable time, adoption must be ordered " 'unless the court finds a compelling reason for determining that termination [of parental rights] would be detrimental to the child' because '[t]here would be substantial interference with a child's sibling relationship . . . .' " (*In re Daniel H*. (2002) 99 Cal.App.4th 804, 811.) The purpose of this exception is to preserve long-standing sibling relationships that serve as "anchors for dependent children whose lives are in turmoil." (*In re Erik P*. (2002) 104 Cal.App.4th 395, 404.) The sibling relationship exception contains "strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.*, at p. 813.) Factors for the court to consider include the nature and extent of the sibling relationship, whether the siblings were raised in the same home, whether they share a close bond and whether continued contact is in the child's best interests, as compared to the benefits of adoption.

(*Ibid.*) The court considers the best interests of the adoptive child, not the best interests of other siblings. (*Ibid.*)

The court did not err by not applying the sibling exception to termination of parental rights. Although Hope had lived with Devin in the grandmother and Ursula's home for the first several months of her life, she was several years younger than Devin and had very strong relationships with her twin siblings, who were much closer to her in age. She would benefit greatly from growing up together with them. The court's decision to order placement in the foster home, where Hope would live with her twin brothers, rather than with the grandmother and Ursula, where she would live with Devin, is supported by substantial evidence. Stephanie has not shown error.

DISPOSITION

The orders are affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P.J.

HALLER, J.