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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CARMEN C.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D062873

(San Diego County
Super. Ct. No. SJ12600)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code

section 366.26¹ hearing. Laura J. Birkmeyer, Judge. Petition dismissed; request for stay denied.

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

Carmen C. seeks writ review of a juvenile court order terminating her reunification services in the dependency case of her son, Isaiah C., and setting a section 366.26 hearing. Carmen contends the San Diego County Health and Human Services Agency (the Agency) and the court failed to give notice of the proceedings to alleged father L.M., also known as Louis M. We dismiss the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2011, the Agency filed a dependency petition for 10-year-old Isaiah. The petition alleged Carmen suffered from mental illness. She hit Isaiah on the head, threatened to kill him, poured water on him and kicked him. Carmen was taken to the hospital for a mental health assessment and Isaiah was detained in foster care.

On June 7, 2011, Carmen told the Agency that Louis was Isaiah's biological father. Carmen said she and Louis had "a one night stand"; her last contact with him was in Washington State on the night Isaiah was conceived; and she had no further information. The detention report listed Louis, address unknown, as Isaiah's presumed father. Some time before June 28, Carmen told the Agency that Louis was "Hawaiian/Samoan." On June 28, the Agency began a search for Louis. At the detention hearing the next day, the court ordered the Agency to search for Isaiah's father. On July 12, Carmen was released from the hospital. On July 25, the court ordered the petition amended to reflect the alleged father's true name, L.M., and ordered the Agency to continue searching for L.M. The record does not disclose why the name was changed from Louis to L.M.

On August 12, 2011, the court made a true finding on the petition; ordered Isaiah removed from Carmen's custody and placed in foster care; ordered Carmen to give the

Agency information about Isaiah's relatives; and ordered reunification services for Carmen. Around October 10, a maternal aunt gave the Agency the telephone number of Guy C. A social worker telephoned Guy, who said he was married to Carmen when Isaiah was conceived and was the biological father. Guy said "his current living situation" and his fear of Carmen precluded him from "seeking custody of Isaiah." Guy's name was added to the petition as an alleged father; the court appointed counsel for him; and he was given notice of subsequent hearings.

On October 18, 2011, Carmen denied Guy was the father and told the Agency, "Isaiah's father is in heaven." Carmen said, "I conceived Isaiah with [L.M.], [six] feet, [three] inches tall. Hawaiian[/]Samoan." On October 19, Carmen told the Agency to "get ahold of Isaiah's biological family on [L.M.]'s behalf because he's the one who got me pregnant." Carmen supplied the family's address in Kahului, Hawaii. The record contains no further mention of the address or any efforts to find L.M.²

On October 30, 2011, Isaiah was moved to a concurrent planning foster home. On December 14, Carmen was admitted to the hospital for another mental health assessment. She was discharged five days later. In March 2012, Guy filed a parentage questionnaire stating he was listed as the father on Isaiah's birth certificate³ and in 2002 he was ordered

² The only further mention of Louis was a statement in Isaiah's January 2012 psychological assessment that Louis was his alleged father.

³ Carmen sent the Agency the birth certificate by electronic mail. The birth certificate is not in the record.

to pay child support. The court ordered paternity testing for Guy. Guy did not follow through with testing, and his counsel was later relieved.

In mid-2012, Isaiah was moved to a new foster home. At the 12-month review hearing on October 17, Carmen requested that reunification services continue and Isaiah be placed with the maternal grandfather. She did not mention notice.⁴ The court terminated Carmen's services and set a section 366.26 hearing for February 13, 2013.

Carmen petitioned for review of the court's orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause, the Agency and Isaiah's counsel responded⁵ and the parties waived oral argument.

DISCUSSION

"Where the interests of two parties interweave, either party has standing to litigate issues that have a[n] impact upon the related interests." (*In re Patricia E.* (1985) 174 Cal.App.3d 1, 6, disapproved on other grounds by *In re Celine R.* (2003) 31 Cal.4th 45, 58-60.) Thus, a parent has standing to raise issues affecting her interest in the parent-child relationship. (*In re Patricia E.*, at p. 6.) Nevertheless, the "general principles" that "standing to appeal is construed liberally and doubts are resolved in its favor [does] not displace the fundamental rule that only a person aggrieved by a decision may appeal." (*In re K.C.* (2011) 52 Cal.4th 231, 238-239.) "For a valid appeal one must be injuriously

⁴ The Agency notes that the minute order of the February 2012 six-month review hearing reflects a statement by Carmen's counsel that counsel did "not have any issues with notice." The minute order does not reveal whether the statement referred to notice to Carmen or to another party.

⁵ Isaiah's counsel joins in the Agency's contention the petition should be denied.

affected by the court's ruling in an immediate and substantial manner, and not as a nominal or remote consequence." (*In re Joshua S.* (1986) 186 Cal.App.3d 147, 150, italics omitted.) "An appellant may contest only such orders which injuriously affect him or her. The appellant cannot urge errors which affect only another party who does not appeal." (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1503, disapproved on other grounds by *In re Chantal S.* (1996) 13 Cal.4th 196, 203-204.)

Carmen lacks standing to assert that L.M. was not given notice of the dependency case. (*In re Caitlin B.* (2000) 78 Cal.App.4th 1190 [mother appealing termination of parental rights lacked standing to argue that alleged fathers were not given notice of the dependency proceedings in violation of their statutory and due process rights]; *In re Jenelle C.* (1987) 197 Cal.App.3d 813, 816-818 [mother appealing termination of parental rights lacked standing to argue that alleged father was not given proper notice].) Carmen contends if there had been notice, L.M. might have sought to establish paternity, and might have requested reunification services, custody or relative placement. Thus, Carmen reasons, the court might not have set a section 366.26 hearing and her parental rights would not now be at risk. This is speculation. L.M. had contact with Carmen only on the night of conception, and had apparently never had contact with 11-and-one-half-year-old Isaiah. For L.M. to obtain reunification services, he would have to establish himself as Isaiah's presumed father. (§ 361.5, subd. (a).) After the dispositional hearing, the relative placement preference does not arise again until "a new placement of the child must be made" (§ 361.3, subd. (d).) At the time of the 12-month review hearing, Isaiah had been in his foster home for several months and no new placement was

necessary. Because this case was past the reunification phase, the focus was on Isaiah's need for permanency and stability, and there was a rebuttable presumption that it was in his best interests to remain in the foster home. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) There is no indication the lack of notice to L.M. caused an immediate injury to Carmen's interests, or that it had any more than a nominal or remote impact on her relationship with Isaiah.

In light of our determination that Carmen lacks standing, we do not address the merits of her contention regarding notice to L.M. The Agency has moved to augment the record with its "ex parte application and order" regarding its search for Louis and L.M., prepared and filed in the juvenile court after Carmen filed the instant petition. We deny that motion as unnecessary.

DISPOSITION

The petition is dismissed. The request for stay is denied.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.