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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

W.M., SR., et al.,

Defendants and Appellants.

E054515

(Super.Ct.No. RIJ117652)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and
Appellant W.M., Sr.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant
and Appellant P.P.

Pamela J. Walls, County Counsel, Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

P.P. (Mother) and W.M., Sr. (Father) appeal from the juvenile court's order terminating parental rights to their child, W.M., Jr. (W.M.). Mother and Father (collectively "the Parents") raise several contentions on appeal. First, the Parents assert their due process rights were violated when the trial court and Department of Public Social Services (the Department) failed to follow the correct procedures for relative placement. (Welf. & Inst. Code, § 361.3.)¹ The Parents assert they have standing to raise the relative placement issue. Second, the Parents assert county counsel had a conflict of interest in representing W.M. on the relative placement issue. Third, the Parents contend the Department should be excluded from this appeal under the doctrine of disentitlement. Father also brought a motion in this court seeking to exclude the Department under the doctrine of disentitlement. Fourth, the Parents assert that if their subargument related to standing is unsuccessful, then this court should independently review the record for any appealable issues. (*In re Sade C.* (1996) 13 Cal.4th 952, 959.) We deny the motion and affirm the judgment.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL HISTORY

A. PRIOR HISTORY

Mother's four older children, by a different father, were placed in protective custody on January 28, 2009, due to (1) one of the children burning a "tattoo" onto one of the other children, and Mother failing to seek medical care for the burn; and (2) Mother's admission that she abused methamphetamines. On January 13, 2011, it was recommended that the four children's paternal aunt be appointed the children's legal guardian. The legal guardianship was granted. Mother's parental rights were terminated as to the four older children.

Father's older child, by a different mother, was placed in protective custody on September 20, 2003, after that mother and baby tested positive for methamphetamine at the time of the child's birth. Father appeared unable to meet the child's needs. In January 2004, Father was not complying with the juvenile court's orders, and "he was involved in criminal activity and drugs." Father was given reunification services, but did not reunify with the child. Father's parental rights were terminated. The child was adopted by Father's brother.

B. DETENTION

Mother delivered W.M. in January 2011. A referral was made to the Department because Mother's four older children were removed from her care, and Mother had tested positive for methamphetamine in 2010, following a miscarriage. A drug test was ordered following W.M.'s birth, but was not completed. Father was not present during W.M.'s birth, because he did not want to be at the hospital during Mother's labor.

Mother told a Department social worker that she lived in Riverside with Father, Father's mother (Grandmother), and Grandmother's boyfriend. Mother stated she and Father suffered prior arrests for drug offenses. Mother said Father was in prison from 2004 through 2008. The social worker left her card with Mother at the hospital and went to interview Father. Father said he was employed as a cement mason. Father denied having current drug abuse problems. Father did not know whether Mother was using drugs while pregnant with W.M. Father showed the social worker the supplies they had for W.M. The Parents had a crib/bassinet, two bags of baby clothes, and six small bottles of baby formula.

The social worker also spoke to Grandmother. Grandmother said she planned to help Mother take care of W.M., when Father was at work. However, Grandmother had suffered three strokes and had medical problems, so she had to "take it easy at times."

The social worker went back to speak to Mother at the hospital. The social worker said she would consider leaving W.M. in Father's care, but Mother would need to find another place to stay. Mother became upset and asked how she could know if the baby would be safe with Father. The social worker asked if Father was "a risk due to drug use or other matters." Mother said she was unsure if Father "had any problems." The social worker informed Mother that the Department would be taking custody of W.M. On January 15, 2011, the social worker transported W.M. to the Department office, and W.M. was placed with a foster family.

On January 16, 2011, Mother told the Department she wanted her sister, E.P., to be considered for a possible relative placement. Mother said she would call the

Department with E.P.'s contact information. The same day, Father told the Department he wanted his cousin and uncle to be considered for a possible relative placement.

Father said he would call the Department with the cousin's and uncle's contact information. The social worker and supervisor² wrote in their report, "As of this date, I have not heard back from the parents regarding the contact information for the relatives they want to be considered." The report was dated January 16, 2011.

The Department filed a dependency petition alleging: (1) there was a substantial risk of W.M. suffering serious physical harm or illness as a result of the Parents' willful or negligent failure to adequately supervise or protect W.M. (§ 300, subd. (b)); and (2) Mother's four older children were abused or neglected so there was a substantial risk of W.M. being abused or neglected (§ 300, subd. (j)).

The juvenile court held a hearing on January 20, 2011. At the hearing, Joni Sinclar (Sinclair) was appointed as attorney and guardian ad litem for W.M. (§ 326.5.) Father and Grandmother were present at the hearing, but Mother was not. The Parents denied the allegations in the petition. The juvenile court found in favor of the Department, and ordered that W.M. continue to be detained. The court ordered reunification services for the Parents. The court found there was not a relative, who had been assessed, to care for the children but noted this was only a "temporary finding and does not preclude later placement with a relative under [section] 361.3."

² We infer the report writers are a social worker and supervisor from their titles "CSSW V" and "CSSS II."

C. JURISDICTION

W.M. continued to be housed with a foster family. W.M. appeared healthy and it did not seem that he had been exposed to drugs prior to birth. Father continued working at his masonry job, and Mother was healing from her cesarean section surgery. The Parents' visits with W.M. went well. The Department recommended denying services to the Parents, due to the Parents' prior unsuccessful history with reunification services. However, the Department suggested that, "on their own," the Parents participate in substance abuse treatment, drug testing, individual therapy, family therapy, and parenting classes. In the case plan, the Department wrote that it would "assess relatives for possible placement who are identified and may come forward and indicate an interest in providing a permanent home for the children"

On February 23, 2011, the juvenile court held a contested jurisdiction hearing in the matter. Sinclair appeared in court, on behalf of W.M. Mother and Father were present at the hearing. The juvenile court found the allegations in the petition to be true.

D. DISPOSITION

W.M. continued to be placed with his foster family. Mother enrolled in an intensive substance abuse treatment program. Father also enrolled in substance abuse treatment. Father attended group therapy sessions, and staff described him as "sincere" and "humble." Father tested positive for methamphetamine on February 28, 2011. Father apologized to his therapy group for relapsing, and staff described Father as "sincerely penitent." The Parents' visits with W.M. continued to go well. The Parents

appeared “very bonded” with W.M. and were excited to see W.M. The foster mother said the Parents did “a good job of maintaining communication” with her.

As part of the case plan, the Department wrote it would “assess relatives for possible placement who are identified and may come forward and indicate an interest in providing a permanent home for the children” The Department changed its services recommendation; the Department suggested the Parents receive reunification services.

On March 11, 2011, the juvenile court held a contested disposition hearing. Sinclair was present at the hearing on behalf of W.M. Mother and Father also attended the hearing. The court found “it would be irresponsible for [it] to follow the Department’s recommendation” concerning granting reunification services. The juvenile court pointed out that Mother had failed to complete her reunification services in her prior case, and that Mother had tested positive for methamphetamine in February 2010, when she suffered a miscarriage. As to Father, the juvenile court stated that it might have granted him services if he had not tested positive for methamphetamines on February 28, 2011. The juvenile court concluded that it could not find it would be in W.M.’s best interests to grant the Parents reunification services. The court denied the Parents reunification services.

The juvenile court again found the allegations in the petition to be true. The court ordered that W.M. continue to be placed in foster care. At the hearing Father’s attorney (Shipley) informed the juvenile court that the Department’s detention report listed various relatives who were being considered for relative placements. Shipley

noted there was no updated information on the relative assessments, and asked the court to have the Department “move forward” with assessing relatives for possible placement of W.M. The juvenile court “direct[ed] the Department to move forward on relative assessment.” The juvenile court ordered a hearing on W.M.’s permanent plan to occur on July 12, 2011. (§ 366.26.)

E. TERMINATION

The Parents continued to have consistent weekly visits with W.M. Mother was able to soothe W.M. when he became fussy. The Department recommended the Parents’ visits be reduced from weekly to monthly visits, because it was likely W.M. would be adopted and less frequent visitation with the Parents would help W.M. to bond with the prospective adoptive parents.

W.M. was bonded to his foster family, and the foster family was interested in adopting W.M. Mother informed the Department of several relatives, from Father’s side of the family, who might be interested in adopting W.M. Mother gave the Department the relatives’ names and addresses. The Department began the process of assessing the relatives. One of the relatives was “ruled out” because he or she did not have legal identification, which is a requirement for placement. Two other relatives and the foster parents were in the process of being assessed.

On April 25, 2011, Grandmother informed the Department that she wanted W.M. placed with her. A Department employee took Grandmother’s information and submitted it for assessment. The following day, Grandmother and a cousin went to a Department office “demanding” a Live Scan (background check). A Department

employee informed Grandmother that she needed to wait to be contacted by the Department. The Department employee explained that Grandmother would be accepting the child for adoption, not a temporary placement. The cousin asked to have W.M. placed at her home, if Grandmother did not qualify.

The Parents moved out of Grandmother's home. Mother told the Department she wanted the foster mother to keep W.M., if he could not be returned to Mother, because the foster mother "has taken such good care of [W.M.]" The Department recommended parental rights be terminated. The Department's recommendation was based upon the Parents continuing to have "drug issues" and their lack of a permanent home and jobs. On June 29, 2011, the Department requested a 30-day continuance, in order to complete the preliminary adoption assessment and the relative assessments. The juvenile court granted the continuance. At the hearing related to the continuance, the juvenile court stated, "It looks like the paternal grandmother is undergoing assessment as well as the foster parents." On August 26, 2011, the Department submitted a report that included a preliminary adoption assessment related to the foster parents.

On September 12, 2011, the juvenile court held a contested selection and implementation hearing. At the hearing, the attorney for the Department, Sunshine Sykes (Sykes), made a special appearance for Sinclair—representing W.M. Sykes informed the court, "On behalf of Ms. Sinclair for the minor, she would be submitting." The juvenile court asked Sykes if she was appearing for Sinclair, and Sykes confirmed that she was. Sykes then said, "On behalf of the Department she would be submitting

on the department—on behalf of Ms. Sinclair, she would be submitting on the Department’s recommendations.”

Mother, Father, and Grandmother were present at the hearing. Mother’s counsel informed the court that Mother contested the termination of her parental rights and she wanted Grandmother to be considered for placement of W.M. Mother’s counsel said to the court, “It’s mother’s position that grandmother has been seeking placement, and that the Department hasn’t been available for the grandmother regarding placement.” Father joined in Mother’s argument. Father asked the court to continue having Grandmother assessed for a relative placement.

The juvenile court did not address the Parents’ requests regarding a relative placement with Grandmother. The juvenile court found it was likely W.M. would be adopted and that there was a sufficient basis for terminating the Parents’ parental rights. The juvenile court cited (1) the order from the March 11, 2011, hearing denying the Parents reunification services, and (2) the true findings related to the petition. Thus, the juvenile court terminated the Parents’ parental rights to W.M.³

³ Grandmother appealed the juvenile court’s order terminating the Parents’ parental rights. On December 9, 2011, this court dismissed Grandmother’s appeal because (1) she did not have de facto parent status, and (2) she did not bring a motion to change, modify, or set aside a juvenile court order (§ 388). The remittitur for Grandmother’s appeal was issued by this court on February 10, 2012. It does not appear from this court’s administrative file that Grandmother sought review of the dismissal order in the Supreme Court. (Cal. Rules of Court, rule 8.272(b) [Court of Appeal receives notification of matters from the Supreme Court].)

DISCUSSION

A. DUE PROCESS

1. *CONTENTION*

The Parents assert their due process rights were violated when the juvenile court and the Department failed to follow the correct procedures for relative placement (§ 361.3). We conclude this contention does not support reversal of the juvenile court's order.

2. *STANDING*

At the outset, we address the standing issue. The Parents assert they have standing to raise the relative placement issue. The Department contends the Parents do not have standing to raise this issue. We agree with the Department.⁴

Our Supreme Court recently considered whether a father had standing to appeal a juvenile court's order declining to place a child with the child's grandparents. (*In re K.C.* (2011) 52 Cal.4th 231, 236 (*K.C.*)) In *K.C.*, our Supreme Court reviewed appellate decisions and derived the following rule: "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent

⁴ In Father's reply brief, he asserts the Department forfeited the argument that he lacks standing to raise the relative placement issue, because the Department did not object to Father raising the relative placement issue in the juvenile court. Standing is typically an issue that may be raised for the first time on appeal. (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 829, fn. 63.) Accordingly, it generally does not need to be raised in the lower court in order to preserve the issue. Further, the standing issue originated from Father's opening brief. Thus, the Department did not raise the issue—it responded to Father's contention. Accordingly, we address the standing issue.

child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*Id.* at p. 238.)

In Father's opening brief, he asserts the trial court and Department erred by not following the proper relative assessment/placement procedures (§ 361.3). Father asserts, "Simply put, there was no fairness in the way the parents, Grandmother, and [W.M.] were treated, or could have objected to, the blanket denial of relative placement by [the Department]." Father does not explain how the issue of relative placement impacted the juvenile court's termination order. For example, Father does not assert that if W.M. had been placed with Grandmother, then Father would have retained his parental rights. Given that Father is only asserting a procedural error, and he is not asserting that the error impacted the juvenile court's termination order, we conclude Father does not have standing to raise the relative placement issue. (See *K.C.*, *supra*, 52 Cal.4th at p. 238.)

In Mother's opening brief, she writes that the relative placement issue "affected mother's interest with respect to her child." Mother continues, "Mother had a legally cognizable interest in seeing [W.M.] placed with family and her legally cognizable interest in such placement was injuriously affected when the court gave preference to a non-relative caretaker under these facts. [Citation.]" Mother's argument suffers from the same problem as Father's argument. Mother does not explain how the relative placement problem impacted the juvenile court's termination order. In other words, Mother is not asserting that if W.M. had been placed with Grandmother, then Mother

would have retained her parental rights. Thus, we conclude Mother does not have standing to raise the relative placement issue. (See *K.C.*, *supra*, 52 Cal.4th at p. 238.)

We note that part of the standing problem may be that the Parents do not seem to be disputing the termination of their parental rights. The Parents are not requesting a reversal of the termination order; rather, they are requesting a reversal of the placement decision. The Parents' argument is problematic because, as set forth *ante*, standing lies where an argument related to placement "advances the parent's argument *against terminating parental rights.*" (*K.C.*, *supra*, 52 Cal.4th at p. 238, italics added.) While the Parents may not dispute the termination of their parental rights, such a dispute needs to exist in order for standing to be conferred upon the Parents.

3 *MERITS*

Despite the Parents' lack of standing, we will address the merits of their contention, because the issue is easily resolved. As set forth *ante*, the Parents assert their due process rights were violated when the juvenile court and the Department failed to follow the correct procedures for relative placement (§ 361.3).

"Section 361.3 gives 'preferential consideration' to placement requests by certain relatives upon the child's removal from the parents' physical custody [Citations.]" (*In re N.V.* (2010) 189 Cal.App.4th 25, 30.) "[W]henEVER a new placement of the child must be made, consideration for placement shall again be given . . . to relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements." (§ 361.3, subd. (d).) "[P]lacement of a child with a relative has the potential to alter the juvenile court's determination of the child's best

interests and the appropriate permanency plan for that child, and may affect a parent's interest in his or her legal status with respect to the child.' [Citation.]" (N.V., at p. 31.)

The Department filed a dependency petition alleging: (1) there was a substantial risk of W.M. suffering serious physical harm or illness as a result of the Parents' willful or negligent failure to adequately supervise or protect W.M. (§ 300, subd. (b)); and (2) Mother's four older children were abused or neglected so there is a substantial risk of W.M. being abused or neglected (§ 300, subd. (j)). The juvenile court found the allegations to be true and denied the Parents reunification services. The juvenile court cited these findings and the denial of reunification services when terminating the Parents' parental rights.

The record reflects the foster mother made positive comments about the Parents. For example, a March 2011 report reflects, "The foster mother indicated that the parents make sincere efforts to attend all visitations, and that they are appropriate during their visits. Reported was that the parents appear very bonded to the child and excited to see him. Also reported was that the parents do a good job of maintaining communication with the foster mother."

While the placement of a child with relatives can have an impact on a case, it is unclear how the placement decision affected the Parents' rights in this case. The Parents do not explain this component of the issue, rather, they focus their arguments on the juvenile court's and Department's alleged failure to follow relative placement procedures. Given the facts and procedural history detailed *ante*, it appears the juvenile court had reasons independent of W.M.'s placement for terminating the Parents'

parental rights. Further, it does not appear that the foster mother impacted the Parents' case by making negative or disparaging comments about the Parents, such that we could determine on our own how the placement issue might have affected the juvenile court's orders.

Assuming the Parents are correct that the juvenile court and Department did not follow proper procedures, the Parents would need to explain how the placement issue impacted their rights, but the Parents do not do this. Without an assertion as to how the Parents' rights have been adversely impacted, we cannot reverse the judgment. Specifically, we cannot reverse an order due to a procedural error, unless there has been a miscarriage of justice. (Cal. Const., art. VI, § 13; see also *In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1380; see also *In re Athena P.* (2002) 103 Cal.App.4th 617, 627 [Fourth Dist., Div. Two].) A miscarriage of justice occurs when "it [is] reasonably probable the result would have been more favorable to the appealing party but for the error." (*In re Celine R.* (2003) 31 Cal.4th 45, 60.) Given the lack of an explanation as to how the error impacted the Parents' rights, we view the error as one of procedural statutory dimension only; it did not affect the parties' due process rights, and did not result in a miscarriage of justice. (*Noreen G.*, at p. 1381 [similar conclusion].) Thus, we conclude the Parents' contention does not support reversal of the termination order.

In Father's reply brief, he writes about how the Department's failure to follow the proper procedures prevented the juvenile court from making "an intelligent independent placement decision." It is this focus on the placement decision, as opposed to the termination decision, that causes us to find Father's argument unpersuasive. In

Father's reply brief, he asks this court only to "reverse and remand the matter to have the relative placement issue be decided by the court in an intelligent manner, after the court receives all of the relevant information and the parties are notice[d] of what that information contains."

Father's request is problematic in two respects. First, Father had an opportunity at the contested selection and implementation hearing to call Grandmother and the social worker(s), in order to question them about relative placement. (See *In re Josiah S.* (2002) 102 Cal.App.4th 403, 417 ["[T]he right to a contested hearing contemplates that a parent 'has the right to testify and otherwise submit evidence, cross-examine adverse witnesses, and argue his [or her] case.'"].) Father did not take advantage of this opportunity to present evidence in the lower court. Second, Father has not explained how reversing the placement decision, and ordering another hearing, will impact the Parents' rights. Thus, we find Father's argument to be unpersuasive.

B. CONFLICT OF INTEREST

1. *CONTENTION*

The Parents assert county counsel had a conflict of interest in representing W.M. on the relative placement issue. The Parents assert Sykes would not have wanted the Department to be found in contempt of court for failing to follow the court's order to conduct a relative assessment, and therefore, Sykes had a conflict in representing W.M. at the hearing. We infer the Parents are accusing Sykes of not being impartial when she represented to the court that Sinclair would submit on the Department's

recommendations. In other words, Sykes had a motive to lie, and perhaps if Sinclair had been present then Sinclair would have argued for placement with Grandmother.

2. *STANDING*

At the outset of this contention, we address the Department's assertion that the Parents do not have standing to appeal this issue on behalf of W.M. We agree with the Department. This court has held, in regard to a parent appealing a conflict of interest involving minor's counsel, "A parent must show that counsel's alleged conflict of interest actually affected the parent's interests." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 811 [Fourth Dist., Div. Two].) The Parents again argue that there were problems with the relative placement procedures—in this instance, Sinclair was not present to argue for placement with Grandmother. However, there is not an explanation of how this affected the Parents' interest, specifically, how this alleged problem impacted the termination order. Since it is unclear how this contention affects the Parents' interest, we conclude the Parents do not have standing to raise the conflict of interest issue.

3. *FORFEITURE*

Next, the Department points out that the Parents never objected to the alleged conflict at the juvenile court. Our review of the record confirms the Department's assertion: The Parents did not (1) object to Sykes's special appearance, or (2) request a continuance until Sinclair could participate. Twice at the hearing, Sykes stated she was specially appearing for Sinclair, but neither Mother nor Father informed the juvenile court this was a problem. A conflict of interest issue may be forfeited if it was not raised in the juvenile court. (*In re Katrina W.* (1994) 31 Cal.App.4th 441, 448.) Thus,

we conclude that if the Parents had standing, they forfeited the issue by failing to raise it at the juvenile court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 [forfeiture applies in dependency cases].)

4. *MERITS*

Despite the standing and forfeiture issues, we address the merits of the Parents' contention. Former section 317,⁵ subdivision (c), provides, "Counsel for the child may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the child's interests." At the termination hearing, Sykes stated that Sinclair, W.M.'s attorney and guardian ad litem, intended to submit on the Department's recommendations. If W.M.'s attorney and guardian ad litem supported the Department's recommendations, then counsel for the Department—Sykes—did not have a conflict of interest in making a special appearance for Sinclair at the termination hearing, because their interests were the same.

Nevertheless, if there was a conflict of interest—if we assume Sykes lied in representing Sinclair's position, the Parents have failed to explain how this conflict improperly impacted the termination order. For example, the Parents have not asserted that Sinclair would have argued for legal guardianship, as opposed to termination. Rather, the Parents are asserting Sinclair might have argued for a relative assessment of Grandmother. For example, Father asserts, "Here, no duty of care could have been

⁵ We refer to the version of section 317 that was effective in 2011, when the termination hearing occurred.

given to both [W.M.] and the [the Department] by the same attorney *on the relative placement issue.*” (Italics added.) Similarly, Mother asserts, “[W.M.] had an interest in his family members being considered for his adoption.” Given the lack of explanation as to how the conflict of interest impacted the termination of the Parents’ parental rights, we cannot find a miscarriage of justice. (Cal. Const., art. VI, § 13.) Thus, we conclude the contention does not support reversal of the termination order.

For the sake of thoroughness, we briefly address Father’s harmless error argument. Father asserts, “This [conflict of interest] error can only be found harmless *after* the information regarding the relatives’ suitability for placement was disseminated to the court and the parties and the preparers of that information were available for cross-examination.” In Father’s reply brief, he concedes his argument related to the conflict of interest is “sheer speculation.” Father asserts he must speculate about the conflict “because nothing about relative placement appears in the record.”

Father’s argument is not persuasive because there is no indication as to why Father did not call Grandmother and/or the social worker to testify at the termination hearing. On appeal Father is indicating that not enough information is available, but Father could likely have obtained the necessary information by questioning Grandmother and/or the social worker about the progress of the relative assessment and the suitability for placement at the contested selection and implementation hearing. (See *In re Josiah S.*, *supra*, 102 Cal.App.4th at p. 417 [“[T]he right to a contested hearing contemplates that a parent ‘has the right to testify and otherwise submit evidence, cross-examine adverse witnesses, and argue his [or her] case.’”].) Father did

not call witnesses, so we do not find his argument related to a lack of information to be persuasive.

C. DISENTITLEMENT

The Parents contend the Department should be excluded from this appeal under the doctrine of disentitlement. Father has also filed a separate motion with this court arguing the Department should be excluded from this appeal under the doctrine of disentitlement. This court reserved its ruling on the motion, in order to consider the motion with the appeal. We disagree with the Parents' contention and will deny the motion.⁶

The doctrine of disentitlement provides, “A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing [its] demands while [it] stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]’ [Citation.] [¶] The principle that a court may refuse assistance to a party who fails to comply with a court order has been applied in a dependency proceeding.” (*In re C.C.* (2003) 111 Cal.App.4th 76, 84 [Fourth Dist., Div. Two].) “The disentitlement doctrine is a recognized nonstatutory doctrine of law. Courts have not hesitated to apply the doctrine to deny a party a statutory right it would otherwise enjoy.” (*Id.* at p. 90.) The doctrine has been applied to “authorize [the] dismissal of appeals notwithstanding the fact the right of appeal is guaranteed by statute, and the

⁶ The Department asserts the Parents have forfeited this contention by failing to raise it in the juvenile court. We agree that the Parents did not raise the disentitlement doctrine in the juvenile court, but we choose to address the merits of the issue, since the issue is easily resolved.

statutes conferring the right contain no proviso to the effect that a party may be denied the right based on failure to comply with the directives of the court. [Citation.]” (*Ibid.*)

The juvenile court directed the Department “to please move forward to assess relatives for placement.” The evidence provided in the record reflects that, after the court’s order, the Department made progress with the relative assessments. The record reflects three relatives were referred for assessment. One relative was “ruled out” due to not having any form of legal identification. Two other relatives were in the assessment process. In a subsequent report, the Department wrote that two referrals were “closed for lack of response,” but it planned to complete other assessments.

While we do not condone the Department’s lack of specificity in the reports, given the foregoing evidence, it appears the Department complied with the juvenile court’s order, because the Department was making progress with the relative assessments. Since the Department was complying with the court’s order, the Department was not standing in an “attitude of contempt” to the court’s orders. Thus, we conclude the doctrine of disentitlement does not apply in this case.

Mother contends the doctrine should apply because the Department “failed to produce evidence that an evaluation of relatives took place.” Contrary to Mother’s assertion, the Department submitted its report reflecting the facts listed *ante*—that relatives were in the process of being assessed, or relative assessments had been closed due to lack of identification or lack of response. Thus, we find Mother’s argument to be unpersuasive.

In Father’s motion, he asserts, “When the [termination] hearing was held, [the Department] made no mention of any relative placement evaluations Contrary to Father’s position, at the hearing the Department submitted on its two reports. The reports contained the information detailed *ante*, regarding progress with the relatives’ assessments. Thus, we find Father’s argument to be unpersuasive.

In Father’s motion and opening brief, he contends the Department’s reports were biased, in that the reports contained many details about the foster family but did not mention the names of the Parents’ relatives. Father concludes that “This apparent bias should have rendered the reports inadmissible pursuant to the *Malinda S.* standards.” It is unclear how alleged bias in the reports would result in this court applying the doctrine of disentanglement. Thus, we find Father’s argument to be unpersuasive.

D. INDEPENDENT REVIEW

The Parents assert that if their subargument related to standing is unsuccessful, then this court should independently review the record for any appealable issues. (*In re Sade C.*, *supra*, 13 Cal.4th at p. 959.) We disagree.

In a *Sade C.* case, counsel files a letter or brief raising no arguable issues and asks “the court to “independently review the entire record on appeal” for any arguable issue. [Citation.]” (*In re Phoenix H.* (2009) 47 Cal.4th 835, 841.)

The Parents have raised several issues on appeal. Thus, there is no cause for this court to independently review the record—counsel already found issues. Accordingly, we decline the Parents’ request to independently review the record.

DISPOSITION

Father's motion filed January 4, 2012, is denied. The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.