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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re Z.B., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.B. et al.

Defendants and Appellants.

E062582

(Super.Ct.No. INJ1400025)

OPINION

APPEAL from the Superior Court of Riverside County. Lawrence P. Best,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part; dismissed in  
part.

Michele Anne Cella, under appointment by the Court of Appeal, for Defendant  
and Appellant S.B.

Rich Pfeiffer for Defendants and Appellants T.D. and C.K.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Julie Koons Jarvi, Deputy County Counsel for Plaintiff and Respondent.

Carl Fabian, under appointment by the Court of Appeal, for Minor.

Defendant and appellant S.B. (Father) appeals after the termination of his parental rights to Z.B. (the child) at a Welfare and Institutions Code section 366.26<sup>1</sup> hearing, and the denial of his section 388 petition.<sup>2</sup> In addition, defendants and appellants T.D. and C.K. (collectively, “Caregivers”), have filed an appeal from the denial of their section 388 petition. They allege that the child was entrusted to the care of Foster Parents when she was detained from Father and Mother immediately after her birth. Foster Parents allowed Caregivers to care for the child 50 percent of the time during the first four months of the child’s life and assured them they would be able to adopt the child. However, after the first four months, Foster Parents advised Caregivers that Caregivers could no longer care for the child because she was going to be reunited with Mother and Father. Instead, Foster Parents applied for and were granted de facto parent status, and sought to adopt the child. Caregivers filed a section 388 petition requesting that the child be removed from Foster Parents’ care and placed with them. Their petition was denied by the juvenile court. Thereafter, the parental rights of Mother and Father were terminated, and the child was freed for adoption by Foster Parents.

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

<sup>2</sup> R.F. (Mother) does not appeal the termination of her parental rights.

Father contends on appeal that the juvenile court erred by denying his section 388 petition as he had shown changed circumstances and it was in the child's best interest to grant the petition. He also contends that if this court finds that the section 388 petition should have been granted, the order terminating his parental rights must also be reversed.

Caregivers contend on appeal as follows:<sup>3</sup> (1) The juvenile court erred by refusing to conduct an evidentiary hearing on their section 388 petition and remand for a hearing should be ordered; (2) the juvenile court erred by granting de facto parent status to Foster Parents; and (3) Caregivers request a remand be ordered for a hearing on Foster Parents' misconduct and the involvement of plaintiff and respondent Riverside County Department of Children and Family Services (Department) in that misconduct.

We affirm the denial of Father's section 388 petition and termination of his parental rights. We conclude that the Caregivers do not have standing to appeal the denial of their section 388 petition and the grant of de facto parent status to Foster Parents. Finally, we will not order an additional hearing.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. DETENTION**

The child was born in January 2014. She was immediately detained from Mother and Father by the Department.

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<sup>3</sup> Caregivers have also filed a motion to take additional evidence pursuant to Code of Civil Procedure section 909 in support of their claim that the trial court erred by denying their Welfare and Institutions Code section 388 petition. Since we conclude they do not have standing to appeal the denial of their Welfare and Institutions Code section 388 petition, we deny the motion.

In January 2014, the Department received an immediate response referral from Desert Regional Medical Center. After the child's birth, a nurse entered the room and discovered that the child was no longer in her crib. Father was asleep in a chair in the room and it did not appear that the child was with him. Mother did not know where the child was but she had last seen her being held by Father. It was then discovered that the child was underneath Father. A nurse tried to wake Father, but was unable to wake him. A nurse had to violently shake and push him. Once Father moved, the child was found underneath him. The child was gray in color and had no heartbeat. The doctors were able to resuscitate the child. The child remained in the Neonatal Intensive Care Unit. Her prognosis was unknown although she was stable. The child and Mother had tested negative for all drugs.

Mother and Father did not appear concerned about the child. Father admitted a history of methamphetamine and other drug use but claimed to have been sober for three months. Father had been successful in a rehabilitation program six years before the child's birth, but had relapsed when he realized things were not any different when he was sober. Mother admitted smoking marijuana during the pregnancy and used methamphetamine up until she discovered she was pregnant. She had very little prenatal care. She reported she had provisions for the child and family support. Mother was living with her grandparents. Father was homeless. Mother stated she had been diagnosed as bipolar but did not take medication. Father admitted to smoking marijuana a few days prior to the child's birth. Father and Mother both stated that Father was the biological father.

Father claimed that he had worked a 13-hour day just prior to the child's birth. Father had been holding the child because she had been crying. Father fell asleep and the child ended up underneath him. Father stated it was an accident and that the Department did not need to be involved.

The Department outlined a safety plan for Mother and Father if the child was to return to their care. Father became upset and said it was "bull shit" since it was just an accident. Father finally agreed to sign the safety plan. The safety plan included an inspection of the home where Mother was living. Upon arrival at Mother's grandparents' home, grandparents advised the social worker that Mother had not lived with them since August 2012. Mother's grandmother reported she did not allow Mother in the home because persons Mother allowed to come into the home stole items. Further, there were no provisions for the child in the home. Mother's grandmother stated that Mother stayed at various homes. They were unwilling to care for the child.

The social worker returned to the hospital and confronted Mother. Father stated that he and Mother lied because the social worker had not "give[n them] the time of day." Father claimed to have provisions for the child "here and there." The child was detained.

As of January 21, the child continued to be stable but her oxygen levels were low. There was no determination as to the long-term effects of the oxygen deprivation.

On January 22, 2012, the Department filed a section 300 petition against Father and Mother for the child. It was alleged under section 300, subdivision (b), that Mother and Father failed to adequately care for the child, failed to provide appropriate food, and were unable to care for her due to their substance abuse problems.

The detention hearing was held on January 23, 2014. The juvenile court found that Father was the presumed father of the child. The juvenile court found a prima facie case and ordered that the child be detained.

B. JURISDICTIONAL/DISPOSITIONAL REPORT AND HEARING

A jurisdiction/disposition report was filed on February 10, 2014. According to the report, the child had been placed with Foster Parents, which was a medically fragile licensed foster home located in Riverside County, on January 27, 2014.

Mother and Father had several prior convictions. They both were on probation for drug possession and theft convictions. Father claimed he was half asleep when the nurse handed him the child. Father was looking for a place to live. Father had been raised by his grandparents and his mother was a drug addict. By the age of 12, Father was living on the streets and using methamphetamine. He had received substance abuse treatment but had relapsed. Father felt great loss since the child was taken. He blamed the hospital. Mother stated that Father had no family to support him.

The child had been placed in the Foster Parents' home. Several tests revealed the child was developing normally although there was a report by Foster Parents that the child had a heart murmur. She was being referred to a cardiologist. She was not gaining weight. Foster Parents explained that they had been treating medically fragile children for 12 years. They planned to have the child receive follow-up medical care.

The Department noted that it appeared the suffocating of the child was an "unfortunate accident." Father's homelessness could have contributed to him being exhausted. However, Mother and Father were not prepared for the child's birth. Both

Mother and Father showed lack of judgment in the care of the child. It was recommended that both Father and Mother receive reunification services.

The jurisdiction/dispositional hearing was held on February 14, 2014. Father waived his rights to a hearing. The juvenile court found the petition true except for the allegations against Mother that she suffered from bipolar disorder. Mother and Father were both granted six months of reunification services.

C. SIX-MONTH REVIEW REPORTS AND HEARING

A six-month review report was filed on July 31, 2014. The Department recommended that reunification services for Mother and Father be terminated. The Department recommended that a section 366.26 hearing be set and that adoption be the permanent plan.

The child remained with Foster Parents and they were willing to adopt her. The child was developing at an advanced level. She had no known health problems. Foster Parents provided a loving and supportive home environment. During the reporting period, Mother had tested positive for amphetamines and methamphetamine on several occasions. Father admitted using marijuana. Father tested positive for methamphetamines. Father insisted he would enroll in a treatment program but had not done so yet.

Visitation between Father and the child was sporadic and inconsistent. Father slept during one of the visits. Both Mother and Father came to visitations looking tired and showing signs of either being under the influence or coming down from using controlled substances. They also were no shows for visits.

Father and Mother were still homeless and had no income. Father told the social worker on two separate occasions that he wanted to relinquish his parental rights. These were times where it appeared he and Mother were fighting.

At the review hearing held on August 14, 2014, Mother and Father were not present and had no recent contact with their counsel. Reunification services for Mother and Father were terminated. A section 366.26 hearing was set.

On August 27, 2014, Foster Parents filed a JV-295 form seeking to be named the de facto parents. Foster Parents declared that the child had lived in their home since January 27, 2014. They were responsible for her day-to-day. The form included the statement, "I am [the child]'s primary caretaker, I have her 24/7."

An addendum report was filed on September 26, 2014. The Department recommended a continuance of the administrative review with regards to the de facto parent request by Foster Parents. The Department had received an "Out of Home Investigation" referral for the home, and Community Care Licensing (CCL) was investigating a complaint regarding the home. The Department wanted additional time to investigate the complaints.

The Department filed an addendum report on October 29, 2014. The Department recommended that Foster Parents be granted de facto parent status because it was in the child's best interest to remain in their care. The Department stated that the child was attached and bonded to Foster Parents because she had been in their care since she was only a few days old.

The Department had received a complaint that the child was having unauthorized contact with a couple. The Department stated, “It was found that the [Foster Parents] did obtain babysitting assistance from the couple which was considered by the Department to be beyond what is allowed using prudent parent standards.”

The Department also received a complaint of neglect that the Foster Parents’ home contained 11 people. The Department conducted an extensive investigation and determined there were a total of nine people living in the home. This included the Foster Parents, the child, five adopted children and one biological child. It found there was ample room in the home for the nine people and that the child was not being neglected. Further, the Department found there was “appropriate attachment” between the child and Foster Parents.

CCL’s investigation revealed that the home exceeded the limit of children; six children was the maximum. However, the Foster Parents applied for and received an exception.

Mother’s grandmother was contacted regarding taking the child, but decided it was not possible. The child’s attorney expressed concern about the number of children in the Foster Parents’ home.

On October 28, 2014, a social worker conducted an unannounced visit at the Foster Parents’ home. The house had five bedrooms and all of the children had their own beds. The child slept in a crib in the Foster Parents’ room. Foster Parents had three other adult children who did not live in the house. The house was reasonably clean. The child was in good health and condition.

The Department concluded that the child was no longer medically fragile, in part due to the excellent care provided by Foster Parents. The child was surrounded by six loving children and loving Foster Parents. They were part of a supportive community. The Department recommended that the de facto parent petition be granted.

D. SECTION 388 PETITIONS

Both Father and Caregivers filed section 388 petitions. The contents of those petitions and the juvenile court's determination to deny the petitions will be discussed, *post*.

E. SECTION 366.26 REPORTS AND HEARING

The Department filed its section 366.26 report on November 25, 2014. They recommended that the permanent plan be adoption and that the parental rights of Father and Mother be terminated. The Department noted that Foster Parents were willing to adopt the child. They were meeting all of the child's needs and the child was bonded to them.

At the section 366.26 hearing conducted on December 12, 2014, Mother and Father's parental rights were terminated and the child was freed for adoption by Foster Parents. Father and the Caregivers filed timely notices of appeal from the denial of their section 388 petitions.

## **DISCUSSION**

### **A. FATHER'S SECTION 388 PETITION**

Father contends that the juvenile court erred by denying his section 388 petition without a hearing. Father insists that he had presented a prima facie case of changed circumstances and that it was in the best interest of the child to return her to his care.

#### **1. *ADDITIONAL FACTUAL BACKGROUND***

Father filed his section 388 petition on November 7, 2014. On September 26, 2014, Father enrolled in an inpatient substance abuse program. He would complete the program on November 9, 2014. He had made great progress on his case plan. He had tested negative on all recent drug tests. He had received several certificates of achievement while in treatment. He sought to have the section 366.26 hearing vacated and allowed custody of the child on a family maintenance program or to be given additional family reunification services. Based on his progress and sobriety, it was in the child's best interest to return her to Father's care. The court ordered a hearing on the matter on December 12, 2014.

On December 9, 2014, the Department filed a response requesting that the juvenile court deny Father's section 388 petition. The Department noted that Father had very positive visits with the child on October 23, 2014, and December 20, 2014. He appeared sober and had negative drug tests. He appropriately took care of the child. Father claimed to be attending AA and NA meetings but had no records. Father was staying with a friend. Mother was pregnant again. The Department noted that Father was

“changing” but was only in the preliminary stages of sobriety. Father remained homeless and unemployed.

At the time the matter was heard, Father’s counsel provided that Father had completed the inpatient drug treatment program and had been released. Father had been consistently attending AA and NA meetings. He had found an apartment. Father was employed at a temporary agency. It was in the child’s best interest based on the recent visitations that showed a bond between Father and the child that she be returned to his care.

The juvenile court ruled, “All right. While there are some change in circumstances, I don’t believe it’s in the child’s best interest. And the request to change court order is denied.”

## 2. ANALYSIS

“Section 388 allows a person having an interest in a dependent child of the court to petition the court for a hearing to change, modify, or set aside any previous order on the grounds of change of circumstance or new evidence.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) “[S]pecific allegations describing the evidence constituting the proffered changed circumstances or new evidence’ is required.” (*Ibid.*) It “shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction.” (Former § 388, subd. (a).)

A section 388 petition must state a “prima facie case in order to trigger the right to proceed by way of a full hearing.” (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592.) ““There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children.”” (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079 [Fourth Dist., Div. Two].) “A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. [Citations.] While the petition must be liberally construed in favor of its sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child’s best interests.” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.)

A section 388 petition is addressed to the juvenile court’s discretion, and its ruling will not be disturbed on appeal absent a showing of a clear abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.) “The denial of a section 388 [petition] rarely merits reversal as an abuse of discretion.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

Initially, Father contends that the juvenile court’s ruling denying the section 388 petition without a full evidentiary hearing was self-contradictory because the juvenile court determined that he had made a prima facie case of changed circumstances and it was in the child’s best interest to grant the section 388 petition based on the JV-183 form filled out by the juvenile court. On the form, it stated as follows: “The court orders a

hearing on the form JV-180 request because the best interest of the child may be promoted by the request.” The juvenile court checked the box and indicated the hearing would take place on December 12, 2014, at 8:00 a.m. Father contends that by later denying the section 388 petition, without a full evidentiary hearing, such ruling was contradictory.

We note that the case of *In re G.B.*, *supra*, 227 Cal.App.4th 1147 is instructive. In that case, the juvenile court had also signed a form stating that the child’s best interest may be promoted by granting the section 388 petition and set a hearing date. (*G.B.* at p. 1158.) The appellate court concluded that even if the form could be construed to show that the juvenile court initially thought a prima facie case had been shown, “[a] juvenile court has the authority to change, modify, or set aside a previous order sua sponte if it decides that a previous order was ‘erroneously, inadvertently or improvidently granted.’” [Citation.] Thus, even if the juvenile court here had determined when it checked the box that mother’s section 388 petition established a prima facie case, it retained the discretion to change that determination upon further consideration, and it did so.” (*Id.* at p. 1160.)

Here, the juvenile court signed the form. It reviewed all Father’s documents submitted with the section 388 petition. It then heard argument by counsel and additional progress by defendant. It then denied the section 388 petition without hearing testimony or taking any further evidence. We will assume, without deciding the issue, that this was

not a full evidentiary hearing.<sup>4</sup> However, a full hearing was not necessary, as Father's petition only showed changing circumstance and it was not in the child's best interest to be returned to Father, e.g. Father failed to present a prima facie case entitling him to a hearing. The juvenile court could determine after hearing argument by counsel that in fact a prima facie case had not been shown.

Initially, Father had shown that his circumstances were changing, but not changed circumstances. Father had begun using methamphetamine at the age of 12 years. At the time that the child was detained, Father insisted he had been sober for three months. He had successfully completed a rehabilitation program six years prior to the child's birth, but he admitted that he had relapsed. Father had smoked marijuana a few days prior to the child's birth. Father had several prior convictions for drug possession. Father himself admitted that he began using methamphetamine at the age of 12 years. Most telling of the frailty of his sobriety was the fact that he tested positive for methamphetamines during the six-month reunification period. Despite his expression of a sense of loss since he had lost custody of the child, and his desire to be reunited with her, it was not enough to keep him sober. Father's substance abuse problem continued to plague him.

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<sup>4</sup> The Department has argued that since the juvenile court reviewed the section 388 petition, considered the accompanying documents, and allowed Father's counsel to argue the issue, he received a hearing.

Additionally, on two occasions when Father and Mother were fighting, he offered to relinquish his parental rights to the child. Additionally, he had only recently found housing and employment. Father was not consistent in his commitment to the child and he was only starting to achieve a stable life.

Further, Father could not show it would be in the child's best interest to return to Father's care. Throughout the dependency proceedings, Father's visitation with the child was sporadic and inconsistent. He actually slept during one of the incidents. The Department did note that Father and the child had two positive visits. But this was not enough to show a true bond between Father and the child. Based on Father's instability and substance abuse problems, it was not in the child's best interest to be placed with him.

Finally, by all accounts, the child was in a safe and loving home.<sup>5</sup> Although Foster Parents had initially allowed Caregivers to watch the child on occasion, they had

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<sup>5</sup> In his reply brief, Father raises for the first time that it was in the child's best interest to be placed with him because Foster Parents provided an inadequate home. He also insists that the Department's records were inadequate and he should have been entitled to cross-examine the social worker regarding the reports. He joins in Caregivers' motion to take additional evidence. Arguments raised for the first time in the reply brief "will not be entertained." (*People v. Tully* (2012) 54 Cal.4th 952, 1075.) Despite Father being aware of the issues with Foster Parents when he filed his section 388 petition, he did not make an argument that it was in the child's best interest to be placed with him due to the inadequacy of the Foster Parents' home, on appeal or in the juvenile court. As such we will not consider the argument. Moreover, we have denied Caregivers' motion to hear additional evidence. The child's counsel at oral argument requested that this court ignore this procedural bar and remand for a hearing on Father's section 388 petition essentially as a way to have a hearing regarding the Foster Parents' actions. However, as noted, Father had failed to make a prima facie showing of changed circumstances as would be required to grant a hearing on his section 388 petition.

cared for the child full time for over six months. There was no dispute that at the time that Father filed his section 388 petition, the child was bonded to Foster Parents and the other children in the home. Although there were numerous children in the home, there was ample space. the child had been placed in a loving and stable home.<sup>6</sup>

The juvenile court properly concluded that Father had failed to present a prima facie case that he had changed his circumstances and that it was in the child's best interest to be placed with him. As such, it properly denied Father's section 388 petition.

#### B. CAREGIVERS' STANDING TO APPEAL<sup>7</sup>

Caregivers appeal the denial of their section 388 petition and they contest the grant of de facto parent status to Foster Parents. We conclude that they have no standing to appeal either the denial of their 388 petition or the granting of de facto parent status. As such, we dismiss these claims in their appeal.

##### 1. *ADDITIONAL FACTUAL BACKGROUND*

Caregivers filed their section 388 petition on October 31, 2014. The relief they sought was the change of the court's order placing the child in the custody of Foster Parents. They also sought placement of the child with them. They alleged that minor's

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<sup>6</sup> We note that the child's counsel has stated that it would not be detrimental to move the child from the custody of Foster Parents, but has not alleged any lack of care or problems in the Foster Parents' home.

<sup>7</sup> This court is bound to conclude that Caregivers do not have standing to appeal the denial of their section 388 petition. However, this court is very concerned about the actions of Foster Parents in this case and the impact of their actions on Caregivers. Like the trial court stated, as will be set forth *post*, we encourage the Department to fully investigate the actions of the Foster Parents to ensure that this situation is not repeated.

counsel agreed with the change of placement. Caregivers had recently been approved as a foster home and were in the process of becoming a “fos-adopt” home. They alleged that for the first five months that the child was in the Foster Parents’ care, the child stayed with Caregivers 50 percent of the time. They were bonded with the child. Caregivers’ home was more suitable as an adoptive home.

According to Caregivers’ declaration, they joined an organization called “For the Children” in order to get their foster care license. It was their understanding that For the Children took in children on an emergency basis and then worked to have the children transferred to members of the organization for a permanent home.

The foster mother, M.M, met Caregivers at a CPR class conducted in the Foster Parents’ home. M.M. told them that she already had nine children and could not adequately care for the child. M.M. immediately allowed Caregivers to take the child to their home. Thereafter, on almost every weekend, Caregivers picked up the child on Fridays and returned her to the Foster Parents home on Sunday. This continued for over four months. There were occasions that they took the child during the week. They had her for an entire week at one point. Caregivers fell in love with the child and Foster Parents assured them that they had no intention of adopting the child. M.M. told them she would have the child transferred to them. Caregivers provided the dates that the child stayed in their home.

After June 2014, Foster Parents no longer allowed Caregivers to see the child. M.M. told Caregivers that the child was being reunited with her birth parents. However, Caregivers discovered in August 2014 that Foster Parents intended to adopt the child.

Caregivers contacted the Department and provided numerous photographs and videos documenting the time spent with the child. Caregivers attended a team decision meeting. However, the Department concluded that the child was in an appropriate placement with Foster Parents.

Caregivers outlined all of the activities that they did with the child and the plans they had for her care. Caregivers had ample resources and time to care for the child. They attached photographs of the child, taken while she was in their care, to the section 388 petition. They also attached numerous character letters attesting to their care of the child and ability as parents.

On November 25, 2014, the Department filed its addendum addressing the preliminary assessment of Foster Parents as prospective adoptive parents. The Department noted that the child was 10 months old and that she was living with Foster Parents. The child had no developmental or mental problems. There had been two referrals for child abuse at the Foster Parents home during their 13 years of being foster parents. One report was of neglect because a toddler had a bite mark on his face. It was determined that a younger child in the home had bit him. The other allegation was for the child for neglect (by Caregivers), that there were other people living in the home and caring for her. The Department reported that this was unfounded. The Department reported that Foster Parents took care of the child in the early months of life. The child was bonded to Foster Parents. The Department concluded that Foster Parents had been “appropriate caretakers” to the child.

On December 9, 2014, the Department filed a response to Caregivers' section 388 petition. The Department believed that the short time that Caregivers spent with the child did not "make for a bond and relationship" such that the child should be removed from Foster Parents. Further, Caregivers had no contact with the child during the prior six months. The Department insisted that Caregivers were merely "friendly playmates." The Department concluded that the child's continued stability and permanence outweighed Caregivers' request. It would be detrimental to disrupt the stability the child enjoyed in the care of Foster Parents.

Caregivers submitted a letter from the Foster Care Ombudsman (FCO) office responding to their complaints about For the Children and a request to have the child placed with them. The FCO noted that a waiver for the number of children in the Foster Parents home was properly obtained. Further, the Department was in the process of investigating For the Children. Finally, the issue of placement would be addressed in the dependency proceeding. Caregivers also submitted letters from Mother's grandparents requesting that the child be placed with the Caregivers.

## 2. ANALYSIS

Here, Caregivers were not the parents, were not relatives, and were not the de facto parents. As such, they were not parties to the dependency proceeding. Although under the language of section 388, any *interested party* may file a section 388 petition, that does not necessarily entitle the party to appeal the decision. (§ 388.)

“Generally, an aggrieved party may appeal a judgment in a juvenile dependency matter. [Citation.] To be aggrieved, a party must have a legally cognizable interest that is injuriously affected by the court’s decision.” (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053.) “The right of appeal . . . extends by statute only to a ‘party aggrieved’ by the order appealed from.” (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 703 (*Aaron R.*))

The California Supreme Court recently addressed the right to appeal in dependency proceedings. It held, “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. [Citation.] An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision. [Citation.] These rules apply with full force to appeals from dependency proceedings.” (*In re K.C.* (2011) 52 Cal.4th 231, 236 (*K.C.*)). In *K.C.*, the court found that that father did not have standing to appeal the denial of the grandmother’s section 388 petition, in which she requested placement of the dependent child, because the father could not show he was an aggrieved party. The grandmother had not filed a notice of appeal. The court concluded, “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.” (*K.C.*, at p. 238.)

The case of *Aaron R.*, *supra*, 130 Cal.App.4th 697 is instructive. In that case, the court considered whether the grandmother had standing to appeal the denial of her own section 388 petition. The court found that the grandmother’s petition was from the order placing the minor in long-term foster care. The grandmother sought to have the minor placed in her custody during the dependency proceedings, which were almost concluded. (*Aaron R.*, at p. 703.) The court noted that “[t]he change in custody could give the grandmother only a fleeting status as [the minor]’s caretaker before he is placed for adoption . . . .” (*Ibid.*) However, the court concluded that the order would have given her preference as a relative caretaker under section 366.26, subdivision (k),<sup>8</sup> giving her an opportunity of claiming “preferential consideration in the selection of an adoptive parent under this statute.” (*Id.* at pp. 705-706.)

Here, we cannot conclude that Caregivers were an aggrieved party as defined in *K.C.*, *supra*. Caregivers’ section 388 petition sought to overturn the juvenile court’s order placing the child in the custody of Foster Parents and they requested that the child be placed in their custody in order to adopt her. However, even if the juvenile court determined that Foster Parents had acted inappropriately, that did not necessarily result in Caregivers getting custody of the child.

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<sup>8</sup> Under section 366.26, subdivision (k), “Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child’s emotional well-being.”

If the juvenile court agreed and changed its order regarding placement, Caregivers, as nonrelatives, had no preference in placement of the child. Section 361.3, subdivision (a) provides, “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.” An aggrieved relative who was denied placement may possess standing to challenge a juvenile court’s placement order. (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034-1035.) Here, as nonrelatives, Caregivers had no preference in the placement of the child and no rights to custody.

Caregivers assume they would have received placement of the child. In fact, the juvenile court may not have placed the child with Caregivers if it found that Foster Parents had engaged in egregious conduct by allowing Caregivers to take care of the child. Caregivers were not an approved “fos-adopt” home at the time. The juvenile court could reasonably be concerned that Caregivers were willing to take custody of the child while not being appropriately licensed. Further, as described by the Department, Caregivers babysat the child during the first four months of her life. They had no contact with the child for six months prior to the filing of their section 388 petition. Even if Caregivers had been successful in having the juvenile court change its order of placement, it is pure speculation that the juvenile court would have placed the child with them.

Although there was a “nominal” or “remote” chance that the child would be placed with Caregivers, they had no right to have the child placed with them; they cannot show that their rights to the child were affected in an “immediate” and “substantial way.” (*K.C.*, *supra*, 52 Cal.4th at p. 236.)<sup>9</sup> As such, they cannot show they were aggrieved party.

Additionally, we note that only parties of record may appeal. (*In re Joseph G.* (2000) 83 Cal.App.4th 712, 715; § 395.) “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. [Citation.] A person does not become a party of record merely because his or her name and interest appear in documents filed with the court or are referenced in the judgment.” (*Ibid.*)

Caregivers have relied upon *In re Matthew P.* (1999) 71 Cal.App.4th 841 (*Matthew P.*), in their brief and at oral argument to support that they were entitled to a hearing on their section 388 petition, the denial of a hearing violated their due process rights, and that they have standing to appeal the denial of their section 388 petition. In *Matthew P.*, the former foster parents, who were also de facto parents, had custody of the two boys that were the subject of the dependency for three years, and filed a section 388 petition to have them returned to them from respite care. (*Id.* at pp. 846-848.) They were

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<sup>9</sup> Caregivers stated in their section 388 petition that they had been told by the Department that they would be considered as nonrelated extended family members for placement but there is nothing in the record to support they were given such status. Nor have we found any authority supporting that this would give them preference in the placement of the child.

denied the opportunity to cross-examine the social worker who prepared false reports that were unfavorable to the foster parents/de facto parents. (*Id.* at pp. 847-848.) They appealed the denial of their section 388 petition, which had occurred without a hearing. The appellate court found that “parties to dependency proceedings have a due process right . . . to confront and cross-examine witnesses.” (*Id.* at p. 849.) The court additionally held, “Attaining the status of de facto parents allowed the [foster parents] to participate ‘as parties’ in hearings by being present and represented by counsel and by presenting evidence.” (*Id.* at p. 850.) The court concluded that based on the facts of the case, the foster parents’/de facto parents’ due process rights overrode any competing interest in “resolving dependency matters expeditiously and allowing the juvenile court wide latitude to control dependency proceedings.” (*Id.* at p. 851.)

Here, Caregivers never sought to be made de facto parents in this case. They were not a parent, relative or even a guardian. As such, they are not parties to the dependency proceedings and arguably have no statutory right to appeal. *Matthew P.* does not warrant a finding of standing in this case.

Similarly, Caregivers have no standing to attack the finding that Foster Parents were declared de facto parents. Caregivers are not parties to the dependency proceedings and have no standing to raise this claim.

Moreover, we note that the child’s counsel has filed a brief joining in the arguments of Caregivers. Unfortunately, the child did not file a notice of appeal. A party may not challenge a judgment or finding without filing an appeal. (See *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) Because minor did not file an appeal, the issue is not

properly before this court. At oral argument, the child's counsel asked this court to disregard this bar to raising the argument. We cannot ignore that no proper notice of appeal was filed by the child's counsel.

Based on the foregoing, we conclude that Caregivers have no standing to appeal the denial of their section 388 petition or the grant of de facto parent status. These claims raised in Caregivers' brief are dismissed.

### 3. *REQUEST FOR HEARING*

Finally, Caregivers ask this court to remand this case to the juvenile court for a hearing regarding the actions of the Department and Foster Parents in this case.

Initially, as noted, as non-parties to the proceedings Caregivers have not shown they have a right to appeal. Moreover, Caregivers have failed to provide this court with any legal authority that this court can order such a hearing. Argument that is not supported by legal authority waives the claim. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived".])

Moreover, we note that the Department had investigated Foster Parents and met with Caregivers. Additionally, the juvenile court did state at the end of the section 366.26 hearing, "And I'm not making any order to the Department, but I think it would be appropriate that the Department took a look at this case and how it was handled." Caregivers have provided no authority to this court, whereby we can order the juvenile court to conduct a hearing on the matter.

**DISPOSITION**

We affirm the denial of Father’s section 388 petition and termination of his parental rights. Caregivers’ appeal with respect to the denial of their 388 petition and the granting of de facto parent status is dismissed as they have no standing; we further decline to remand for an additional hearing.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER  
J.

We concur:

RAMIREZ  
P. J.

CODRINGTON  
J.