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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re M.M., et al., Persons Coming Under  
the Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.M.,

Defendant and Appellant.

E063560

(Super.Ct.Nos. J243710, J243711 &  
J243712)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl Kersey,  
Judge. Dismissed.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for  
Plaintiff and Respondent.

# I

## INTRODUCTION

The subjects of this appeal are three girls born in 2008, 2010, and 2011, who have been dependents of the juvenile court since April 2012. Their mother, K.M., appeals from the juvenile court's order terminating parental rights in April 2015 after three years of dependency proceedings.<sup>1</sup> Mother contends the juvenile court erred when it terminated parental rights without first considering a paternal aunt, N.M., for placement of the children, according to the preference for placement with a relative as set forth in Welfare and Institutions Code section 361.3.<sup>2</sup>

The County of San Bernardino argues the appeal should be dismissed because mother has no standing on the issue of placement after parental rights have been terminated. (*In re Jayden M.* (2014) 228 Cal.App.4th 1452, 1459-1460.) Furthermore, the juvenile court did not abuse its discretion.

We agree mother has no standing on the issue of relative placement and there is no merit to her appeal. We dismiss the appeal.

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<sup>1</sup> The childrens' father is not a party to the appeal.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

#### *A. Detention—April 2012*

In April 2012, CFS<sup>3</sup> filed a dependency petition and a detention report. The petition alleged failure to protect (§ 300) and that mother and father, D.M., had engaged in substance abuse and domestic violence and had not obtained medical care for the youngest child, M.M.

M.M. had been born drug-positive and prematurely at 24 weeks gestation in June 2011. She required a monthly Synagis vaccine against RSV (respiratory syncytial virus). The parents had missed two monthly appointments in January and February 2012. In March 2012, M.M. was hospitalized with respiratory problems. After she was discharged, the parents missed her April 2012 appointment. The parents admitted using drugs and committing domestic violence against one another. CFS obtained a detention warrant and took the children into protective custody.

The parents had a criminal history. Father was sentenced to prison on a weapons charge in 2004. He was arrested for child cruelty and detained for robbery in 2010. Mother was arrested for petty theft in 2010. The family was also the subject of previous dependency referrals in May 2010, July 2011, and October 2011 and received services.

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<sup>3</sup> County of San Bernardino, Human Services, Children and Family Services.

At the detention hearing, father proposed three family members to be evaluated for a relative placement: a paternal cousin, a paternal aunt, and a paternal great-aunt. Mother offered the names of two people for evaluation. The court detained all three children on April 16, 2012.

*B. Jurisdiction and Disposition—May 2012*

In May 2012, the two older children had been placed in a foster home. The youngest, M.M., was placed in a special-needs home.

Although both parents had some nursing training, they admitted using marijuana “recreationally.” Their transportation problems affected their ability to take care of their children.

CFS recommended the court order reunification services and visitation for the parents. A paternal relative, D.H., was being assessed for placement of all three children. At the jurisdiction and disposition hearing in May 2012, the court sustained the dependency petition and ordered CFS to provide reunification services.

*C. Status Review—November 2012-June 2013*

In November 2012, CFS reported mother had been arrested for domestic violence and petty theft in June 2012 but parents had finally begun participating in services and visitation in August and September 2012. D.H. had been approved for a relative placement subject to special training for the care of M.M. The court ordered dependency and services to continue for another six months and for parents to submit to drug tests.

In May 2013, CFS reported that the children had been placed with D.H. Parents had not participated successfully in services and father was not maintaining sobriety. Mother had been arrested for an attack on father. She was on probation in February 2013. Mother had missed 16 visits while incarcerated. Father had a positive drug test in February 2013. Father admitted weekly drug use. Neither parent was employed.

The court ordered the matter set for a hearing on the termination of services and for a determination of guardianship. In June 2013, the court terminated services and set a guardianship hearing for October 2013.

*D. Supplemental Dependency Petition—September 2013*

CFS filed a supplemental dependency petition in September 2013 after it discovered that D.H.'s adult daughter was living with D.H. While D.H.'s daughter was supposed to be supervising the children, she used marijuana and did not provide adequate care. The children were removed from D.H. and the court set a hearing for January 2014. The court denied D.H.'s petition for defacto parent status.

*E. Section 366.26—January-July 2014*

In January 2014, mother filed a request to change the court order terminating her reunification services on the grounds that she would complete services on her own by March 2014. CFS recommended granting mother's request. CFS asked for a 120-day continuance to locate and evaluate a prospective home for the children. The court granted the mother's request to reinstate services and a 180-day continuance.

In July 2014, CFS recommended the childrens' permanent plan be adoption. Mother had made minimal progress on her case plan. Mother did not have employment or housing and had not completed domestic violence or substance abuse programs. Mother had been arrested for shoplifting and violating her probation. Father had been arrested and incarcerated for check fraud. The court again terminated services for mother.

CFS requested and received continuances until April 2015 to locate and evaluate a home for the children as a sibling set. In March 2015, CFS began to evaluate a paternal aunt, N.M., for placement.

*F. The Contested Hearing—April 9, 2015*

At the contested hearing on April 9, 2015, CFS and the parents' attorneys asked for a continuance to complete assessment of the paternal aunt. The court commented: "These children were removed in April 2012. Parents were offered and participated in services until those services were terminated. It doesn't appear another option would be available, such as legal guardianship. The paternal aunt . . . is pretty much the last relative to be assessed. So that assessment is ongoing. The children are clearly adoptable. [¶] . . . [¶] There is clear and convincing evidence the children will be adopted. [¶] Parental rights are terminated. Adoption is the child[ren's] permanent plan."

### III

#### STANDING

Mother argues that the juvenile court did not comply with section 361.3's requirement of preferential consideration for placement with a relative, the paternal aunt, N.M. 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" considering the "best interest of the child, including special physical, psychological, educational, medical, or emotional needs." (§ 361.3, subd. (a)(1).)

The children were first removed in April 2012 and placed with a relative, D.H., by May 2013. That placement ended in September 2013. The dependency was still ongoing in April 2015—three years after the initial removal—at which time CFS and the parents orally requested another continuance to evaluate the paternal aunt, N.M. for placement. Understandably, the court determined that the children were adoptable and parental rights should be terminated. Under these circumstances, the mother has no standing to challenge the court's order terminating parental rights and the court did not abuse its discretion.

The California Supreme Court has held: "Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal. [Citations.]" (*In re K.C.* (2011) 52 Cal.4th 231, 236.) Thus, '[a]

parent cannot raise issues on appeal which do not affect his or her own rights.’

[Citations.] ‘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.’ (*In re K.C.*, *supra*, 52 Cal.4th at p. 238.)” (*In re Jayden M.*, *supra*, 228 Cal.App.4th at p. 1459.)

In *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035, the court held a parent “has no standing to appeal the relative placement preference issue” because denial of placement did not affect his interest in reunification with his children or preclude him from “presenting any evidence about the children’s best interests or their relationship with him,” citing *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261, and *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1833-1834.

After termination of parental rights, parents have no standing to appeal based on section 361.3: “Section 361.3 gives ‘preferential consideration’ to a relative request for placement, which means ‘that the relative seeking placement shall be the first placement to be considered and investigated.’” (*Cesar V. v. Superior Court*, *supra*, 91 Cal.App.4th at p. 1033, quoting § 361.3, subd. (c)(1).) “Until parental rights are terminated, if the child requires a new placement, any relative who has not been found unsuitable must again receive preferential consideration. (§ 361.3, subd. (d); *Cesar V.*, at p. 1031.) Once a parent’s reunification services have been terminated, the parent has no standing to appeal relative placement preference issues. (*Cesar V.*, at pp. 1034-1035.)” (*In re*

*Jayden M., supra*, 228 Cal.App.4th at pp. 1459-1460.)<sup>4</sup> The parent can no longer argue there should not be termination of parental rights because the child is living with a relative capable of providing a legal guardianship. (§ 366.26, subd. (c)(1)(A).)

Mother recognizes that, once her parental rights are terminated, the court does not have to consider preferential placement with a relative. Nevertheless, mother argues the court should have considered placement with N.M. before it terminated parental rights. We disagree. Nothing in the statutes commands the juvenile court to decide a subsequent placement before terminating parental rights. In April 2015, CFS had not yet determined N.M. was suitable for placement. Mother's reunification services had been terminated twice. There was no exception to adoption. The court found the children were adoptable and properly terminated parental rights. Mother cannot challenge placement preference issues. Therefore, her appeal must be dismissed.

We briefly acknowledge mother's related argument the court should have granted a continuance for CFS to finish evaluating N.M. Even if mother could raise this argument in an appeal, it was not an abuse of discretion for the court to deny any more continuances in a three-year-old dependency proceeding. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 605, citing *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.)

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<sup>4</sup> “[A] child has a legally cognizable interest in his or her placement with a relative. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 306 [natural children have a fundamental independent interest in belonging to a family unit]; § 361.3, subd. (a)(2) [directing the court to consider the child's wishes for relative placement, if appropriate.]” (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053.)

Furthermore, there was no compliance with section 352, subdivision (a), which requires a request for a continuance be supported by a written motion and supporting declaration showing good cause.

IV

DISPOSITION

We dismiss mother's appeal for lack of standing on the issue of relative placement after termination of parental rights.

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CODRINGTON  
J.

We concur:

HOLLENHORST  
Acting P. J.

McKINSTER  
J.