I. BOTH GRANDPARENTS HAVE STANDING.

The general rule is that to have standing to appeal, a person must be both a party of record and sufficiently "aggrieved" by the judgment or order. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.) Although some courts have stated that only parties of record may appeal (*In re Joseph G.* (2000) 83 Cal.App.4th 712, 715), Division One of the First District Court of Appeal stated that the grandmother, "although not a party," did have standing to seek review of the denial of her request for placement. (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 704, citing *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034.) In *Cesar V.* the appellate court found that whether a person has standing in a particular case "generally revolves around the question whether that person has rights that may suffer some injury, actual or threatened." (*Ibid.*)

For the reasons explained below the grandparents have standing on the issues raised in this brief.

A. Grandparents were parties of record.

On June 21, 2004, the court appointed counsel for grandfather "as Defacto parent." (CTI 72.) Thereafter, without any objection or opposition from the court, or any party, counsel began appearing on behalf of both grandparents and sometimes for grandmother alone when she was the only one of the two clients present at the hearing. (CTI 92, 98, 198, 199.)

In any case, the court then itself began to regularly refer to both grandmother and grandfather as a "party.". (CTI 90, 91, 92, 98, 102, 198, 199,

emphasis added.) Moreover, notices hearings were served on grandparents as well as their counsel. (CTI 103, 109). Thus grandparents were each a party of record. (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 539 [A party of record is a person named as a party to the proceedings].) The Department, having failed to appeal or object to the designation of both as parties, has waived its right to contest this now. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1153.)

B. Grandparents were both de facto parents and visitation was ordered.

The court had awarded de facto parent status to grandfather on June 21, 2004, and appointed counsel for him. (CTI 72.) Counsel and the court treated both grandmother and grandfather as a unit. (CTI 90, 91, 92, 102, 139, 140, 198, 199, RT August 22, 2005, pp. 2, 4, 50-51.) Grandmother had been awarded status as the children's legal guardian (RT August 9, 2004, p. 11), and she fit the definition of a de facto parent. (See, *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1513.) Thus, the court had made an implied finding that grandmother was the children's de facto parent, as well, a finding the Department never challenged. (CT *passim*.; RT *passim*..) That status continued as the court on August 22, 2005, ordered, pursuant to the Department's recommendation, that visitation between grandparents and the children continue. (CTII 266, 356.)

C. Grandparents were aggrieved because orders removing the children from grandmother's custody as the children's legal guardian and effectively terminating grandmother's status as that legal guardian were made in the absence of any authority to do so.

The court's order terminating grandmother's guardianship was erroneous, because the children's counsel failed to seek removal of the children from grandmother's custody pursuant to section 388. (See *Carlos E.* (2005) 129 Cal.App.4th 1408, 1418; *In re Nina P.* (1994) 26 Cal.App.4th 615; Cal. Rules of Ct., rule 1466(c).) The guardianship order having not been properly terminated, grandmother is aggrieved by subsequent orders which ignore her prior right to custody.

D. They were further aggrieved because they had always had a strong interest in obtaining custody of the children, they had been correctly told by the juvenile court that they retained the right to attempt to gain and/or regain custody, and they had always been opposed to any termination of their daughter's parental rights.

Each grandparent made it clear to the Department at the outset of the proceedings that their mutual goal was for one or both of them to obtain custody of their grandchildren and to become their legal guardians. They appeared at the first hearing held after the unnoticed detention hearing (CTI 6-8, 12; RT March 15, 2004, pp. 3-4.) At that hearing, County Counsel stated that the grandparents had requested placement but that the Department had declined to make that placement because of "felony convictions" which were of concern. (CTI 12; RT March 15, 2004, pp. 4-5.) When Grandfather stated that there were *no* felony convictions on either of their parts, Grandfather only having been *charged* with a felony over twenty years earlier, County Counsel agreed that that might "be accurate." (RT March 15, 2004, p. 5.) The court explained that the Department was "not used to

reading [a rap sheet]" and that it seemed as if the issue would need to "be revisited." (RT March 15, 2004, p. 6.) County Counsel said that the issue would "come up at disposition." (RT March 15, 2004, p. 6.) The court then asked wither both grandparents were "asking that the children be placed with [them]" to which Grandfather responded that he was "hoping to be able to raise the children" and that he wanted them "out of foster care." (RT March 15, 2004, pp. 7-8.)

Grandmother informed the court that they had already had their daughter placed with them for two years and raised her. (RT March 15, 2004, p. 8.) When the court advised them to consider hiring an attorney, Grandfather responded that they were unable to afford one. (RT March 15, 2004, p. 8.) When the court raised the grandparent-placement issue again at the March 22, 2004, jurisdictional hearing, County Counsel responded that he thought that the Department was working with the uncle because of an "unfavorable" referral as to the grandmother and the criminal history of her boyfriend, the court stated that the issue would "be addressed in more specific detail at the dispositional hearing." (RT March 22, 2004, p. 3.)

In its April 2, 2004, dispositional report the Department informed the court that both grandparents were "very committed to providing permanency for their grandchildren," with both of them being "vested in becoming legal guardians" for their grandchildren. (CTI 74.) It said that while Grandfather could pursue the expensive and time-consuming process of taking steps to expunge his record, Grandmother's background check had been "approved" and unless she had

someone living with her who did not pass and/or her home was deemed inappropriate, it appeared "likely that she could be approved for placement very quickly." (CTI 74.) It also noted that it seemed "reasonable to expect that the grandmother would also qualify for serious consideration as an adoptive parent or legal guardian and that in either one of these capacities she would "have the authority to authorize unlimited visits between the children and the maternal grandfather in the maternal grandfather's home, thereby mitigating his need for an approved placement." (CTI 74.) It therefore concluded that there was "a reasonable expectation for the children's permanency with relatives if reunification [wa]s bypassed" and recommended such a bypass and the setting of a section 366.26. (CTI 74.) After Grandmother agreed to have her boyfriend move out of the house, the Department informed the court that it "would be appropriate and in the children's best interests" for Grandmother to become the children's legal guardian if mother waived services. (CTI 96.)

On June 21, 2004, Grandfather requested that he be appointed as the children's legal guardian. (CTI 70-71.) He said that he and Grandmother had cared for their infant granddaughter when mother abandoned her. (CTI 70.) He said he had also cared for his grandson on many occasions and that he had a close relationship with both children. (CTI 70-71.) The court then found Grandfather to be a de facto parent, appointed counsel Doug Rhoades for him, and ordered that the Department inspect his home. (CTI 72.)

On June 28, 2004, and July 19, 2004, Rhoades appeared without objection

from either the court or County Counsel for both grandparents. (CTI 90, 91.) On August 2, 2004, and August 9, 2004, he appeared without objection for Grandmother alone. (CTI 92, 98.) On August 9, 2004, Jessica waived services, the court appointed Grandmother as the children's legal guardian (RT August 9, p. 11) and it placed the children with her (CTI 115).

In its January 14, 2005, report the Department stated that Doug Rhoades was Grandmother's counsel (CTI 114), that both children were "strongly bonded" with Grandmother and had "spent significant time with her all of their lives" (CTI 122), and that Israel was "very bonded" with Grandmother (CTI 118). Because of the strong bond between Grandmother and the children the Department expressed its desire "to offer services" to her "with the clear understanding" that if she failed to complete her case plan in six months, the children would be removed from her home and placed into foster care until they could be adopted. (CTI 122-123.) The "Joint Assessment" from State Adoptions found that termination of parental rights would be detrimental to the children and that Grandmother did not want her daughter's parental rights to be terminated. (CTI 128.)

Then, after the court erroneously removed the children from Grandmother's care on January 24, 2005, (CTI 139-140), Grandmother having informed the court that she had waited outside the courtroom that day but having not been told that the hearing was starting and therefore not having provided testimony on the removal question (CTI 141-142), Grandmother not only ensured that the court was provided with numerous additional letters from herself and others (CTI 160-192)

but she requested on February 7, 2005, that the court reinstate her as the children's guardian (RT February 7, 2005; CTI 198).[1] The court told her at that point that its denial of her request was "certainly without prejudice to change the placement back to the grandmother down the line" and that she had the right to file a section 388 petition for that in the future. (RT February 7, 2005, pp. 8-9; CT 198.)

Grandmother thereafter continued to express concern that the children should be "with family." (CTII 256.) Moreover, the children continued to indicate that they wished to be returned to Grandmother's home. According to Atteridge, Athena continued to "display[] ***a lot of family loyalty angst . . . regarding her grandmother"*** and "being moved" from Grandmother's home because she ***"often" "question[ed]" Atteridge "on why she was removed from her grandmother's home."*** (CTII 253, emphasis added.) Additionally, Israel "talk[ed] ***a lot*** about his grandmother" and said that he "***want[ed] to be with her***." (CTII 255, emphasis added.)

Prior to the August 22, 2005, hearing neither Grandmother nor Grandfather were informed of the fact that the court could terminate parental rights and thereby, by invoking subdivision (j) of section 366.26, deprive them of the ability to file a section 388 petition to obtain custody absent a showing that State

---

[1] As noted above, in her related appeal in case number A109735. which is now pending before this court, Grandmother has thereafter argued on appeal that the children had been erroneously removed from her care and her guardianship status erroneously terminated.

Adoptions was abusing its discretion in choosing a placement for the children (see *Department of Social Services v. Superior Court* (1997) 58 Cal.App.4th 721, 734 [68 Cal.Rptr.2d 239] (*Theodore D.*)). (CTII *passim*.; RT *passim*.)

At the conclusion of August 22, 2005, hearing the court both terminated Jessica's parental rights because it had concluded that although "a clear specific relative or stranger adoption ha[d] not been established at th[at] time," there "appear[ed] to be one in the horizon" and "if that f[ell] apart," the children were still "clearly adoptable." (RT August 22, 2005, p. 63.)

Thus the grandparents' interest in obtaining and/or regaining custody of the children, as well as their right to attempt to do so, and their interest in preventing termination of their daughter's parental rights so that they could attempt to do so was substantially harmed, given the fact that pursuant to section 366.26 (j) once parental rights were terminated, the right to determine placement of the children was transferred from the juvenile court to State Adoptions and unless the high standard of abuse of discretion in that placement could be shown (see *Theodore D.*, *supra*) and the power to determine placement returned to the juvenile court, any section 388 petition which they might have previously been able to pursue, had they had notice that the court was bent upon terminating parental rights in the face of strong opposition by the Department, they could not longer pursue. Had they been able to file that petition and had the court ruled favorably upon it, they would have obtained what Division One in its opinion in *Aaron R. supra*, 130 Cal.App.4th at p. 703 referred to as "fleeting status" as the children's caretakers

which would have, pursuant to subdivision (k) of section 366.26, given them placement priority, that statute "assure[ing] interested relatives that their applications for the child's custody 'will be considered before a stranger's application'" (*Ibid*.).

For these reasons, as well, Grandmother and Grandfather were aggrieved by the order.