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In re Interest of Meridian H., a child under 18 years of age. State of Nebraska and Department of Health and Human Services, appellees and cross-appellees, v. Jeffrey H. and Karen H., on behalf of Damon H. and Aleeah H., minor children, intervenors-appellants, and Mark H. and Tammy H., intervenors-appellees and cross-appellants, and Shane K. and Brandi K., intervenors-appellees.

798 N.W.2d 96

Filed May 6, 2011. No. S-10-905.

1. **Juvenile Courts: Appeal and Error.** Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings.
2. **Jurisdiction: Appeal and Error.** A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court's decision.
3. **Juvenile Courts: Jurisdiction: Appeal and Error.** In a juvenile case, as in any other appeal, before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
4. **Standing: Jurisdiction.** Standing relates to a court's power, that is, jurisdiction, to address issues presented and serves to identify those disputes which are appropriately resolved through the judicial process.
5. **Standing.** Under the doctrine of standing, a court may decline to determine merits of a legal claim because the party advancing it is not properly situated to be entitled to its judicial determination. The focus is on the party, not the claim itself.
6. **Standing: Jurisdiction.** Standing requires that a litigant have such a personal stake in the outcome of a controversy as to warrant invocation of a court's jurisdiction and justify exercise of the court's remedial powers on the litigant's behalf.
7. **Standing: Claims: Parties.** To have standing, a litigant must assert the litigant's own rights and interests, and cannot rest a claim on the legal rights or interests of third parties.
8. **Child Custody.** The effect of a particular placement on a child's relationship with siblings is but one factor, albeit an important one, which a court should consider in determining whether the placement is in the child's best interests.

Appeal from the Separate Juvenile Court of Sarpy County: Linda S. Porter, Judge. Appeal dismissed.

Christine P. Costantakos for intervenors-appellants.

Sandra K. Markley, Deputy Sarpy County Attorney, for appellee State of Nebraska.

Carla Heathershaw Risko, Special Assistant Attorney General, for appellee Department of Health and Human Services.

Karen S. Nelson, of Schirber & Wagner, L.L.P., for intervenors-appellees Mark H. and Tammy H.

Patrick A. Campagna and Stephanie M. Nevins, Senior Certified Law Student, of Lustgarten & Roberts, P.C., L.L.O., for intervenors-appellees Shane K. and Brandi K.

Daniel J. Hill, of Stinson, Morrison & Hecker, L.L.P., and Sarah Helvey for amicus curiae Nebraska Appleseed Center for Law in the Public Interest.

Ann W. Davis, P.C., guardian ad litem.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

Meridian H. is a 3-year-old girl who was adjudicated pursuant to Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008) and has been in foster care in Nebraska for all but a few weeks of her life. Her presumed biological father died before she was born, and her biological mother's parental rights have been terminated. She has two older siblings, both minors, who were adopted before her birth upon relinquishment of parental rights by their biological parents. The adoptive parents, on behalf of the siblings, intervened in the juvenile court proceedings and requested that Meridian be placed in their home in the State of Minnesota. The separate juvenile court of Sarpy County denied the request, and the adoptive parents now appeal. Meridian's maternal grandparents, who also intervened in the juvenile proceedings, have filed a cross-appeal.

FACTS AND PROCEDURAL BACKGROUND

Tiffani H. is the biological mother of Damon H., born in 2002, and Aleeah H., born in 2003. Their biological father was

Isaiah J. Upon relinquishment of parental rights, Damon and Aleeah were adopted in the State of Minnesota by Jeffrey H. and Karen H. in December 2004. The family currently resides in Minnesota.

Isaiah died in June 2007. Nine days later, Tiffani gave birth to Meridian. Although Isaiah's name did not appear on the birth certificate, Tiffani "strongly believed" that he was Meridian's father. Paternity was never definitively established, but genetic testing excluded another man who thought he might be Meridian's father. For purposes of this appeal, we assume that Isaiah was Meridian's father and that Meridian, Damon, and Aleeah are full biological siblings.

Although it is unclear from the record, the parties indicate in their briefs that Tiffani resided in Nebraska at the time of Meridian's birth. When Meridian was approximately 2 weeks old, Tiffani took her to Minnesota to visit Meridian's siblings' family and Meridian's paternal grandmother.

On or about September 17, 2007, Tiffani was involved in a motor vehicle accident in Nebraska and was cited for driving under the influence and several other offenses for which she was jailed. Meridian, who was in the vehicle at the time of the accident, was initially placed with a family member. On September 20, Meridian was taken into the custody of the Nebraska Department of Health and Human Services (DHHS) and placed in a foster home. When Jeffrey and Karen learned of this development sometime during the fall of 2007, they notified DHHS that they were willing and interested in providing a foster home for Meridian.

The State initiated abuse and neglect proceedings in the separate juvenile court for Sarpy County on September 26, 2007, and on October 3, the court continued Meridian's placement in the temporary custody of DHHS and ordered that Tiffani have supervised visitation. In December 2007, the State amended its petition and Meridian was adjudicated a child pursuant to § 43-247(3)(a) based upon Tiffani's admission of the allegations of the amended petition.

After a disposition hearing on February 20, 2008, the juvenile court found that reasonable efforts had been made to eliminate the need for Meridian's removal from her home, but

that because Tiffani was incarcerated and unable to care for Meridian, returning her to the parental home at that time was contrary to her best interests. The tentative permanency plan was for eventual reunification with Tiffani. Pursuant to that plan, the court ordered Tiffani to complete a parenting program and a chemical dependency evaluation.

After a brief placement in another foster home, on March 10, 2008, DHHS placed Meridian in the foster home of Shane K. and Brandi K., who reside in La Vista, Nebraska. On April 10, noting that the tentative permanency plan was still reunification, the juvenile court ordered Tiffani to complete a specific residential chemical dependency treatment program, and it placed Meridian in Tiffani's custody at the treatment facility. On May 13, DHHS returned Meridian to the foster parents' home, and she has resided there continuously since then.

Following a hearing on July 23, 2008, the court ordered Meridian to remain in the custody of DHHS, and Tiffani was allowed supervised visitation. The court also ordered DHHS to obtain a home study of Jeffrey and Karen's home under the Interstate Compact on Placement of Children.[1] In an order entered on September 11, the court noted that the permanency plan for reunification with Tiffani continued to be appropriate because Tiffani had entered a treatment program, but it noted that the concurrent plan was adoption. The court ordered custody to remain with DHHS, and again ordered Tiffani to complete a parenting program and a residential chemical dependency treatment program.

In December 2008, Tiffani informed a DHHS case manager that she still desired reunification with Meridian. At about the same time, a man contacted DHHS and stated that he might be Meridian's biological father. On December 17, the court continued custody with DHHS and ordered it to conduct an expedited home study of Jeffrey and Karen's home in Minnesota.

In February 2009, DHHS arranged for paternity testing, which results excluded the person who had indicated that

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[1] See Neb. Rev. Stat. § 43-1101 (Reissue 2008) (repealed by 2009 Neb. Laws, L.B. 237, § 5, effective Aug. 30, 2009).

he might be Meridian's father. In the same month, Tiffani informed DHHS that she wished to relinquish parental rights with respect to Meridian. The juvenile court ordered that DHHS continue to have custody of Meridian and also ordered an evaluation to determine her best interests with respect to placement. At this point, DHHS considered both the foster parents and Jeffrey and Karen to be potential adoptive families for Meridian. In June, DHHS obtained the court-ordered home study which "highly recommended" placement of Meridian with Jeffrey and Karen.

In April 2009, DHHS retained Glenda Cottam, Ph.D., J.D., to conduct a placement suitability assessment for Meridian. Based upon this evaluation, Cottam concluded: "Although either the [foster parents'] home or [Jeffrey and Karen's] home would be an excellent adoptive home for Meridian, the undersigned psychologist believes that Meridian should grow up with the opportunity to have a close and loving relationship with her two biological siblings and extended family." Cottam noted that Meridian "could experience some difficulties in adjusting/transitioning" to Jeffrey and Karen's home, but that they appeared "able and willing" to assist Meridian with respect to "issues related to attachment problems." On June 14, DHHS advised the court that it agreed with Cottam's recommendation. It recommended that the permanency objective be changed to adoption and that Meridian be placed in Jeffrey and Karen's home. The guardian ad litem approved this plan "reluctantly," noting that Meridian was "deeply bonded" to the foster parents and that they would support an open adoption "giving Meridian an opportunity to develop a relationship with her siblings." Beginning in June, DHHS arranged for the siblings' family to visit Meridian in Nebraska.

On June 19, 2009, the court ordered DHHS to engage Nancy Thompson, M.S., to formulate a plan for Meridian to have contact with the siblings' family to determine the effect on her if there was a change of placement. Thompson, a licensed mental health practitioner, observed a visit by the siblings' family to the foster parents' home on August 1. In a report to DHHS, Thompson noted that she was "impressed with the respect and kindness both families showed to each other and

all the children." While noting that both families demonstrated "responsible parenting skills," she recommended that Meridian be allowed "to remain with her current foster family and to continue to form relationships with her biological family through visits and other appropriate communication." Thompson concluded: "While Meridian shares a common genetic makeup with the [siblings], there is no emotional bond built from early-shared experience and common caretaking. At this critical stage of brain development, creating another attachment break has significant negative implications for future emotional and cognitive development." Based in part upon Thompson's recommendations, DHHS changed its previous position and recommended that it was in Meridian's best interests to continue placement with and work toward eventual adoption by the foster parents.

The State filed a motion for termination of Tiffani's parental rights on September 15, 2009, on grounds set forth in Neb. Rev. Stat. § 43-292(4) and (7) (Cum. Supp. 2010). Several parties sought and were granted leave to intervene in the juvenile proceedings. These included Mark H. and Tammy H., Meridian's maternal grandparents; the foster parents, who claimed to stand in loco parentis to Meridian and wished to be heard on the issues of best interests and placement if termination of parental rights occurred; and Jeffrey and Karen, in their capacities as parents and guardians of Damon and Aleeah. In their complaint for leave to intervene, Jeffrey and Karen alleged that Damon and Aleeah knew and loved their sister Meridian and wished to develop their relationship with her. They alleged that Damon and Aleeah have a fundamental liberty interest in the integrity of the family unit under the Due Process Clause of the 14th Amendment to the U.S. Constitution and article I, §§ 1 and 3, of the Nebraska Constitution. They requested that they be allowed to adopt Meridian in the event of the termination of Tiffani's parental rights. Jeffrey and Karen further alleged that because Damon and Alleah were related to Meridian, they had priority with respect to placement.

After obtaining leave to intervene, Jeffrey and Karen filed a motion for change of placement in which they requested that Meridian be placed in their home so that she could reside with

her siblings. They also filed an answer alleging that intervention by the foster parents was legally improper and unnecessary because Meridian's interests in placement and eventual adoption were adequately represented by DHHS. They also filed an objection to the DHHS case plan which called for continued placement with and eventual adoption by the foster parents.

On March 15, 2010, Jeffrey and Karen filed an amended motion for change of placement in which they alleged that Tiffani, Meridian's paternal grandmother, and Meridian's maternal grandparents all favored placement of Meridian with Jeffrey and Karen so that she could reside with Damon and Aleeah. They further alleged that DHHS was engaging in "active and systematic efforts" to break up Meridian's biological family in violation of state and federal law.

A trial was then conducted. Cottam and Thompson testified regarding their opinions as previously set forth in their reports discussed above. Meridian's guardian ad litem testified that it "may not be in Meridian's best interest to be removed from the only family that she's known" and that it would be "better" to continue Meridian's placement with the foster parents. The guardian ad litem further testified that if placement remained with the foster parents, it would be important for Meridian to develop a relationship with her siblings. Based on conversations with the foster parents, she believed that they sincerely shared that view.

An employee of DHHS whose responsibilities include administration of foster care and adoption testified that under DHHS policy and regulations, siblings should be placed together whenever possible, provided such placement is in the best interests of the child. She identified a DHHS administrative memorandum dealing with actions required under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act).[2] The administrative memorandum was received in evidence, and the court took judicial notice of the federal statute.

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[2] Pub. L. No. 110-351, 2008 U.S.C.C.A.N. (122 Stat. 3949) (codified as amended at scattered sections in title 42 of U.S. Code).

The court also received the parties' stipulation that intervenors Mark and Tammy, Meridian's maternal grandparents, have periodically visited with Meridian during the pendency of the juvenile proceedings, that they maintain contact with Damon and Aleeah, and that it is their desire that Meridian be placed with Damon and Aleeah in Jeffrey and Karen's home.

On September 1, 2010, the juvenile court entered an order overruling Jeffrey and Karen's motion for change of placement. The court first noted that in a separate order of the same date, it had found by clear and convincing evidence that Tiffani's parental rights should be terminated and that termination of parental rights was in Meridian's best interests. While the separate order is not included in the record before us, the parties do not dispute that Tiffani's parental rights have been terminated.

The juvenile court then noted that under Neb. Rev. Stat. § 43-285(2) (Reissue 2008), Jeffrey and Karen and others supporting the change of placement had the burden to prove that Meridian's current placement with the foster parents was not in her best interests. After reviewing the evidence, the court concluded that the burden had not been met. The court determined that the applicability of the federal Fostering Connections Act was "less than clear in this case" due to the fact that Meridian was born after Damon and Aleeah were adopted by Jeffrey and Karen and thus "never lived with or knew either of those children as her siblings." The court found that the "one certainty" which would accompany a change in placement "would be emotional harm to Meridian" and that whether such harm would be of long- or short-term duration was speculative. The court noted that the foster parents testified that if Meridian remained in their home, they would be willing to foster a relationship with Jeffrey and Karen so that Meridian could know her biological siblings as she grows up. The court acknowledged this testimony may not be legally binding, but found it "sincere and credible." The court concluded that while it did not doubt the motives of the grandparents or Jeffrey and Karen,

> what they are seeking is an order . . . which would remove Meridian from the only home she has known and from foster parents who have loved and cared for her as if

> she were their own child over the last two and a half years of her life. While relatives are certainly to be given due consideration in terms of placement decisions, it is not the controlling factor as to a child's best interests. The fact that the [foster parents] have cared for and loved Meridian with no certainty they would be able to keep her, with limited support from [DHHS,] and with all indications of a generous and selfless commitment to her, is something this Court cannot discount or dismiss.

Jeffrey and Karen perfected a timely appeal from this order.

ASSIGNMENTS OF ERROR

Jeffrey and Karen assign the following errors: (1) The juvenile court's order contravenes the public policy of preserving sibling relationships, state law, the federal Fostering Connections Act, and DHHS' regulations and administrative policies; (2) the juvenile court erred in overruling the placement motion and failing to order visitation between Damon and Aleeah and Meridian, as the evidence shows that it is in Meridian's best interests to be placed in the same home as her siblings and to have visitation with them; (3) the juvenile court's finding that it is certain that Meridian will be emotionally harmed if her placement is changed is not supported by any competent evidence; (4) the juvenile court erred by failing to find that Damon and Aleeah have a fundamental liberty interest in their relationship with their sister Meridian; and (5) the juvenile court abused its discretion in its finding that the foster parents stand in loco parentis in relation to Meridian.

The maternal grandparents have filed a cross-appeal, in which they assert that the juvenile court erred in (1) finding that the foster parents stand in loco parentis to Meridian, (2) failing to find that Damon and Aleeah have a fundamental liberty interest in their relationship and placement with Meridian, (3) finding that Meridian would be emotionally harmed if her placement was changed, and (4) failing to place Meridian with her siblings and failing to find that the failure to place Meridian with her siblings violated DHHS policy and state and federal law.

STANDARD OF REVIEW

[1] Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings.[3]

[2] A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court's decision.[4]

ANALYSIS

Introduction

[3] In a juvenile case, as in any other appeal, before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.[5] Two jurisdictional issues are presented in this case. The first is whether the order denying the change in placement is a final, appealable order. Under Neb. Rev. Stat. § 25-1902 (Reissue 2008), the three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered.[6] The first and third types of final orders clearly are not present in this case. But the second type may be, as a proceeding before a juvenile court is a special proceeding for appellate purposes.[7] To resolve the final order issue, we must determine whether the denial of

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[3] *In re Interest of Chance J.*, 279 Neb. 81, 776 N.W.2d 519 (2009).

[4] *Davio v. Nebraska Dept. of Health & Human Servs.*, 280 Neb. 263, 786 N.W.2d 655 (2010).

[5] *In re Interest of Taylor W.*, 276 Neb. 679, 757 N.W.2d 1 (2008).

[6] *Kilgore v. Nebraska Dept. of Health & Human Servs.*, 277 Neb. 456, 763 N.W.2d 77 (2009).

[7] *In re Interest of Anthony R. et al.*, 264 Neb. 699, 651 N.W.2d 231 (2002); *In re Interest of Clifford M. et al.*, 258 Neb. 800, 606 N.W.2d 743 (2000).

Damon and Aleeah's motion to change placement affected their "substantial right."

[4-6] The second jurisdictional issue is whether Damon and Aleeah have standing to appeal from the placement order. Standing relates to a court's power, that is, jurisdiction, to address issues presented and serves to identify those disputes which are appropriately resolved through the judicial process.[8] Under the doctrine of standing, a court may decline to determine merits of a legal claim because the party advancing it is not properly situated to be entitled to its judicial determination.[9] The focus is on the party, not the claim itself.[10] Standing requires that a litigant have such a personal stake in the outcome of a controversy as to warrant invocation of a court's jurisdiction and justify exercise of the court's remedial powers on the litigant's behalf.[11] Thus, both the final order issue and the standing issue require an analysis of the existence and nature of any rights which Damon and Aleeah may possess, and how such rights, if any, were affected by the placement determination. We address these questions in the context of standing.

Damon and Aleeah Have No Cognizable Rights With Respect to Meridian's Placement Arising Under Nebraska Statutes, Regulations, or Common Law

Neb. Rev. Stat. § 43-2,106.01 (Reissue 2008) provides that an appeal from a final order or judgment entered by a juvenile court may be taken by specified parties including "(a) The juvenile; (b) The guardian ad litem; (c) The juvenile's parent, custodian, or guardian . . . or (d) The county attorney or petitioner . . . ." Jeffrey and Karen acknowledge that Damon and Aleeah do not fall within any of these categories, but they

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[8] *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010).

[9] *Id.*

[10] *Id.*

[11] *Id.*

argue that the statutory list is not exclusive. They note that we have reached the merits of appeals from juvenile court orders brought by parties who are not specifically authorized by statute to appeal. In those cases, however, the issue on appeal was whether the court erred in denying leave to intervene.[12] In holding that grandparents should have been permitted to intervene in a juvenile case at a point where parental rights had not been terminated, we noted that intervention enabled interested grandparents to "receive notice and have an opportunity to be heard" with respect to actions which could affect their relationship with their grandchildren, but did not confer "any special entitlements or priorities . . . with respect to temporary custody, placement, or any other issue before the juvenile court."[13]

Here, the order from which Jeffrey and Karen seek to appeal determined that a change in Meridian's foster placement following termination of Tiffani's parental rights was not in her best interests. Assuming without deciding that a person who is not statutorily authorized to appeal from such an order could nevertheless do so, such person would be required to demonstrate a personal stake in the controversy in order to have standing necessary to invoke appellate jurisdiction.[14]

Jeffrey and Karen argue that Damon and Aleeah have standing under Nebraska's "public policy fostering the preservation of sibling relationships and the placement of siblings together, where possible."[15] They rely upon Neb. Rev. Stat. § 43-533(4)(b) (Reissue 2008), which provides that "when a child cannot remain with parents, [state agencies should] give preference to relatives as a placement resource." They also argue that preservation of a sibling relationship is implicit in

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[12] See, *In re Interest of Elias L.*, 277 Neb. 1023, 767 N.W.2d 98 (2009); *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002); *In re Interest of Kayle C. & Kylee C.*, 253 Neb. 685, 574 N.W.2d 473 (1998).

[13] *In re Interest of Kayle C. & Kylee C., supra* note 12, 253 Neb. at 693, 574 N.W.2d at 478.

[14] See *Central Neb. Pub. Power Dist. v. North Platte NRD, supra* note 8.

[15] Brief for intervenors-appellants at 4.

provisions of the Nebraska Juvenile Code which require that reasonable efforts be made to reunify families[16] and is explicit in DHHS administrative policies and regulations which encourage that siblings be placed together when possible.

This court stated in *In re Interest of Aaron D.*[17] and *In re Interest of L.J., J.J., and J.N.J.*[18] that juvenile courts must recognize, if possible, the interests of siblings. But we did so in the context of determining the sufficiency of the evidence to support a finding that termination of parental rights was in the best interests of the adjudicated juvenile. In both cases, we found the evidence on this issue to be insufficient. As part of the analysis in *In re Interest of Aaron D.*, we noted that there was uncontradicted testimony that the juvenile would be harmed by the termination of his relationship with his sister, which we described as "a de facto result" of termination of parental rights.[19] We have never recognized a right on the part of unadjudicated siblings to seek establishment or preservation of a claimed sibling relationship in juvenile abuse and neglect proceedings. But we have specifically held that a juvenile court lacks jurisdiction to order visitation between an adjudicated juvenile and an unadjudicated sibling against the wishes of the parent.[20]

[7] The Nebraska statutes and regulations which reflect a policy favoring preservation of a sibling relationship do so only within the context of determining the best interests of a juvenile who is subject to the jurisdiction of a juvenile court or otherwise entrusted to the custody of DHHS. To have standing, a litigant must assert the litigant's own rights and interests, and cannot rest a claim on the legal rights or interests of third

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[16] See Neb. Rev. Stat. § 43-283.01(2) (Cum. Supp. 2010).

[17] *In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

[18] *In re Interest of L.J., J.J., and J.N.J.*, 220 Neb. 102, 368 N.W.2d 474 (1985).

[19] *In re Interest of Aaron D., supra* note 17, 269 Neb. at 265, 691 N.W.2d at 176.

[20] *In re Interest of D.W.*, 249 Neb. 133, 542 N.W.2d 407 (1996).

parties.[21] We conclude that under Nebraska law, Damon and Aleeah have no cognizable interest in the sibling relationship separate and distinct from that of Meridian. Here, the guardian ad litem did not appeal on Meridian's behalf and has joined in the briefs of the appellees.

Damon and Aleeah Have No Constitutionally Protected Rights With Respect to Meridian's Placement

In their motion for change of placement, Jeffrey and Karen alleged that Damon and Aleeah "have a fundamental liberty interest in the integrity of the family unit," including a relationship with their biological sibling Meridian, which is protected by the Due Process Clause of the 14th Amendment to the U.S. Constitution and article I, §§ 1 and 3, of the Nebraska Constitution. Although the juvenile court did not specifically address this issue, Jeffrey and Karen and amicus curiae urge this court to recognize the existence of the claimed constitutional right as a matter of first impression. Because the issue bears directly on the question of standing, we consider it.

The U.S. Supreme Court has long held that a parent has a constitutional right to make decisions regarding custody and control of his or her child,[22] and based upon this precedent, this court has recognized that "both parents and their children have cognizable substantive due process rights to the parent-child relationship."[23] These rights "'protect[] not only the parent's right to the companionship, care, custody, and management of his or her child, but also protects the child's reciprocal right to be raised and nurtured by a biological or adoptive parent.'"[24]

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[21] See *Central Neb. Pub. Power Dist. v. North Platte NRD, supra* note 8.

[22] See, *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) (plurality opinion); *Prince v. Massachusetts*, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923).

[23] *Amanda C. v. Case*, 275 Neb. 757, 766, 749 N.W.2d 429, 438 (2008).

[24] *In re Guardianship of D.J.*, 268 Neb. 239, 246, 682 N.W.2d 238, 244 (2004), quoting *Uhing v. Uhing*, 241 Neb. 368, 488 N.W.2d 366 (1992).

But here, the parent-child relationship between the siblings and their biological parents was extinguished by relinquishment in the case of Damon and Aleeah, and by termination of Tiffani's parental rights in the case of Meridian. The question presented to us is whether the constitutionally protected parent-child relationship which *once* existed between Damon and Aleeah and their biological parents and the entirely separate parent-child relationship which once existed between Meridian and her biological mother can be considered together as the basis for a *present* constitutionally protected right of Damon and Aleeah to a relationship with Meridian, with whom they have never resided.

Jeffrey and Karen acknowledge that no court has recognized a constitutionally protected right of one sibling to a relationship with another following termination or relinquishment of parental rights. In *In re Adoption of Pierce*,[25] a Massachusetts appellate court held that a half sister could request visitation with her half brother after his adoption under a state statute. But, the court found she had no constitutional right to visitation, reasoning "[t]he United States Supreme Court has never concluded that there exists a fundamental liberty interest in the sibling relationship."[26]

[8] In the absence of precedent, and given the diverse and complex nature of sibling relationships, we are not persuaded that it would be logical or prudent to conclude that a constitutionally protected sibling relationship somehow rises from the ashes of a lawfully terminated or relinquished parent-child relationship. We agree with other courts which have held that the effect of a particular placement on a child's relationship with siblings is but one factor, albeit an important one, which a court should consider in determining whether the placement is in the child's best interests.[27] We therefore conclude that Damon and Aleeah have no state or federal constitutional right which could be affected by Meridian's placement.

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[25] *In re Adoption of Pierce*, 58 Mass. App. 342, 790 N.E.2d 680 (2003).

[26] *Id.* at 347, 790 N.E.2d at 685.

[27] See, e.g., *Adoption of Hugo*, 428 Mass. 219, 700 N.E.2d 516 (1998); *State ex rel. Treadway v. McCoy*, 189 W. Va. 210, 429 S.E.2d 492 (1993).

Damon and Aleeah Have No Cognizable Rights With Respect to Meridian's Placement Arising Under Federal Fostering Connections Act

Jeffrey and Karen and amicus curiae call our attention to a specific section of the Fostering Connections Act,[28] a federal statute enacted during the pendency of this proceeding approximately 3½ years after Damon and Aleeah were adopted by Jeffrey and Karen and approximately 1 year after Meridian was removed from Tiffani's home. The specific provisions of the Fostering Connections Act they rely upon are codified at 42 U.S.C. § 671(a)(29) and (31). We note that § 671 was amended in 2010 by the Patient Protection and Affordable Care Act.[29] Recently, another provision of that statute was held unconstitutional by a U.S. district court, which also held that § 671 was not severable and was therefore unconstitutional as well.[30] This decision has been stayed pending appeal,[31] so we assume for purposes of this appeal that § 671 remains in effect.

The federal statute requires that in order for a State to be eligible for certain federal funds, it must have a plan approved by the Secretary of Health and Human Services which, inter alia, provides that within 30 days after a child is removed from a parent's custody, the state shall "exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child" of the child's removal from the parent's custody and certain other specified information.[32] The statute also requires that the state's plan provides that reasonable efforts shall be made

> (A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint

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[28] See 42 U.S.C. § 671 (Supp. III 2009).

[29] Pub. L. No. 111-148, 2010 U.S.C.C.A.N. (124 Stat. 119) (2010).

[30] *Florida ex rel. Bondi v. U.S. Dept. of Health and Human Services*, No. 3:10-cv-91-RV/EMT, 2011 WL 285683 (N.D. Fla. Jan. 31, 2011).

[31] *Florida ex rel. Bondi v. U.S. Dept. of Health and Human Services*, No. 3:10-cv-91-RV/EMT, 2011 WL 723117 (N.D. Fla. Mar. 3, 2011).

[32] 42 U.S.C. § 671(a)(29).

> placement would be contrary to the safety or well-being of any of the siblings; and
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> (B) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings[.][33]

The juvenile court took judicial notice of the federal statute and received in evidence a DHHS administrative memorandum informing staff of the federal statutory requirements and requiring their implementation.

We question the applicability of the federal statute to this case, given the fact that all three children were removed from parental custody prior to its enactment. But assuming without deciding that it applies, we do not read the statute as creating any substantive rights in Damon and Aleeah which are cognizable in this proceeding. The Fostering Connections Act was intended "to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, improve incentives for adoption, and for other purposes."[34] Neither the foster parents nor Jeffrey and Karen are "relative caregivers" of Meridian. The Fostering Connections Act places certain responsibilities on a state with respect to a child who it has removed from the custody of its parents, but says nothing about minor siblings of the child who are not in foster care. The statute requires notice to adult relatives of children removed from parental custody, but does not require notice to relatives who are minors or to the parents or custodians of such minors. We conclude that the Fostering Connections Act does not establish any legal interest on the part of Damon and Aleeah which could have been affected by the juvenile court's placement order or serve as the basis for standing.

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[33] 42 U.S.C. § 671(a)(31).

[34] Pub. L. No. 110-351, 2008 U.S.C.C.A.N. (122 Stat. 3949).

CROSS-APPEAL

Mark and Tammy, who were given leave to intervene in the juvenile proceedings as Meridian's maternal grandparents, have filed a cross-appeal in which they contend that the juvenile court erred in not placing Meridian with Jeffrey and Karen. However, any interest or right which Mark and Tammy may have had by virtue of their biological relationship to Meridian ceased to exist when the parental rights of their daughter, Tiffani, were terminated.[35] Accordingly, they lack standing to cross-appeal.

CONCLUSION

For the foregoing reasons, we conclude that the intervenors-appellants and cross-appellants lack standing, and we therefore dismiss the appeal and the cross-appeal.

APPEAL DISMISSED.

WRIGHT, J., not participating.

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[35] See, *In re Interest of Destiny S., supra* note 12; *In re Interest of Kayle C. & Kylee C., supra* note 12; *In re Interest of Ditter*, 212 Neb. 855, 326 N.W.2d 675 (1982).