Children's Law Center of California

"DEPENDENCY LEGAL NEWS"

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Written by: Stacie Hendrix (SH), Nancy Sariñana (NS), Margaret Lee (ML), Kristin Hallak (KH), Michael Ono (MO).

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NEW DEPENDENCY CASELAW

Disposition—WIC 362

In re K.T.—filed 4/29/20; Certified for publication 5/13/20; Second Dist., Div. One
Docket No. B301285
Link to case: https://www.courts.ca.gov/opinions/documents/B301285.PDF

ORDERING A PARENTING PROGRAM FOR A NON-OFFENDING PARENT WHERE THERE IS NO EVIDENCE THAT THE PROGRAM IS NECESSARY TO PROTECT THE CHILD IS AN ABUSE OF DISCRETION.

The agency filed a section 300 petition alleging mother had a history of substance abuse, that she used illicit drugs during her pregnancy with K.T., and father knew or reasonably should have known of mother's substance abuse but failed to protect K.T. At the detention hearing, the court detained from mother and released to father on the condition he reside with his adult daughter. Father had an extensive criminal history and was previously involved in several child welfare proceedings, eventually completing a case plan, including a parent education program, and reunifying with his children. The jurisdiction/disposition report noted K.T. was doing well in father's care and he was properly meeting her needs. Subsequently, the agency filed a first amended petition adding an allegation that father had a history of criminal convictions and was currently on probation. At the jurisdiction hearing, the court sustained the petition as to mother, but struck the allegations against

father, finding him to be nonoffending. The court removed K.T. from mother's custody, ordered her placed with father, removing the condition that father live with his adult child, and ordered father to participate in family maintenance services, including a parenting education program. Father objected to the order that he complete a parenting program because he had already completed one in a prior dependency case. The court refused to change the other. Father appealed.

Reversed. Substantial evidence did not support a finding that in order to protect his daughter, father needed to participate in a parenting course. Under section 362 the court has broad discretion to formulate disposition orders to address parental deficiencies when necessary to protect and promote the child's welfare, even when that parental conduct did not give rise to the dependency proceedings. Here, the record contained uncontroverted evidence that after K.T. was placed with father, he provided appropriate care for K.T. Furthermore, just a few years before, father had completed a formal parenting program. Neither father's criminal history, prior involvement with child welfare, or the fact father had not cared for a baby for many years supported the court's conclusion that parenting classes for father were necessary to protect K.T. (NS)

Jurisdiction—WIC 300(c); Juvenile Custody Orders

In re D.B.—published 5/20/20; Second Dist., Div. Eight
Docket No. B298750;
Link to case: https://www.courts.ca.gov/opinions/documents/B298750M.PDF

SUBSTANTIAL EVIDENCE SUPPORTED THE JUVENILE COURT ASSERTING JURISDICTION UNDER SECTION 300(C); THE COURT'S JUVENILE CUSTODY ORDER WAS A VALID EXERCISE OF AUTHORITY AND ITS VISITATION ORDER WAS NOT A DELEGATION OF THAT AUTHORITY

D.B. was born in 2006. About a month after her birth, mother informed father it was his child and a family law custody proceeding commenced. Family court granted mother sole physical custody with father having visitation every Wednesday evening for two hours and every other Saturday for three hours. After a referral in 2018, the agency substantiated an allegation of emotional abuse. The evidence showed father had repeatedly demeaned D.B. during visits, called her names, commented negatively on her body, made racist comments about her and her mother's side of the family, and exhibited violent behavior toward mother and D.B. Father made disparaging remarks about mother to D.B., called mother and D.B. a liar, and told D.B. she would grow up to be a drug addict, just like her mother. (There was no evidence of any drug use by mother.) After three years of increasing emotional abuse, D.B. became more afraid of father and more vocal about not wanting to visit. In October 2018, father went to mother's house to pick up D.B. for a Wednesday

evening visit two hours and 15 minutes late, and D.B. refused to leave the home. Father became enraged and threw rocks at the house and windows causing D.B. to hide in a closet, crying hysterically. The agency filed a petition alleging D.B. was described under section 300(c). At detention, the juvenile court detained D.B. from father and ordered no visitation pending further court order. At the jurisdictional hearing months later, D.B. testified about the ongoing abuse, described her fear of father, and said she was no longer feeling stressed or anxious because she has not had contact with father. Father testified and denied all allegations and said D.B. was lying. The report said D.B. was flourishing since the no visitation order was put into place. The juvenile court sustained the section 300(c) allegation, removed from father, and issued a juvenile custody order granting mother sole physical and legal custody. The court ordered father to have monitored visits, to commence after father completed or substantially complied with individual counseling and after five conjoint counseling sessions with D.B. Father appealed.

Affirmed. The juvenile court properly exercised jurisdiction based on a finding that father's conduct placed D.B. at substantial risk of severe emotional damage. Five factors supported this finding: 1) father exhibited violent behavior, 2) father verbally abused D.B., 3) father made racist comments to D.B., 4) father acted impulsively and did not exhibit self-restraint, and 5) father lacked any insight and refused to take any responsibility for his behaviors. These five factors caused severe anxiety in D.B., placing her at risk of severe emotional damage. None of the cases father cited are appropriate here; the conflict between father and D. B. is not attributable to generational differences, mother is unable to protect D.B. without this court's assistance, and the case *In re Brison C.* (2008) 81 Cal.App.4th 1373, 1379-82, is distinguishable because in that case the father accepted responsibility and realized he could have chosen different actions to avoid the emotional damage. Further, the juvenile court properly terminated jurisdiction. The question is whether continued jurisdiction was necessary to protect D.B.; it was not. D.B. was flourishing in mother's care and without the ongoing contact with father. Court supervision was no longer necessary. The juvenile court did not restrict the family court's authority to modify the juvenile custody order - it simply made a custody and visitation order pursuant to WIC 302, which the family court may review and modify at a future date. Further, the court's visitation order was not a delegation of authority to the minor, as it detailed specific conditions for visitation and left no veto power to the child regarding the visitation order. If D.B. refused to participate in conjoint counseling, father could bring the matter before the family court for assistance. (SH)

Jurisdiction—Disentitlement doctrine; Disposition

In re E.E. – published 5/21/2020; Fourth Dist., Div. Two
Docket No. E073284
Link to case: https://www.courts.ca.gov/opinions/documents/E073284.PDF

PRE-JURISDICTIONAL CONDUCT THAT IS EVASIVE AND OBSTRUCTIVE BY A PARENT THAT DOES NOT VIOLATE A COURT ORDER CANNOT BE EXTENDED TO THE DISENTITLEMENT DOCTRINE, BUT IT CAN BE USED TO SUPPORT JURISDICTION

The agency received a referral when mother tested positive for amphetamines and marijuana at E.E.'s birth, and a previous positive amphetamine test during a prenatal appointment. Mother and father had three other children, then ages two, six, and ten. When interviewed, father denied that mother used drugs, indicating that she used to smoke marijuana but stopped when she became pregnant with E.E., and that he quit smoking marijuana previously. Mother told the investigating social worker that father knew she tested positive for drugs, she smoked marijuana for pain management, and denied using amphetamines. Parents initially agreed to drug test, but mother did not appear for her test, and father's drug test came back positive for amphetamine, though a confirmation test was negative. Mother lied about drug testing, and father sent an aggressive text to the social worker demanding they leave his family alone. When the agency noticed the parents of the detention hearing the parents reported the children now lived with a family friend. Neither parent appeared at the detention hearing, and the children were detained. When the children were later physically detained from the parents, father denied mother used amphetamine, and said that he and mother only used marijuana. The jurisdiction hearing was continued, and the juvenile court ordered the parents to drug test that day. From the initial jurisdiction hearing until the adjudication, neither parent was drug testing consistently, father continued to deny mother had a drug problem, and neither parent was engaged in services. At the adjudication hearing the juvenile court sustained the petition and removed the children from the parents' custody. Mother appealed.

Affirmed. The agency argued that mother should be barred from seeking appellate relief, as a result of the disentitlement doctrine. In the dependency context, however, the disentitlement doctrine applies when the juvenile court is prevented from protecting the child as a result of a parent violating court orders and is not used as punishment for failing to cooperate with the agency. Pre-jurisdictional conduct by a parent does not extend to the disentitlement doctrine. Here, most of the objectionable behavior by the parents took place before the court took jurisdiction or even detained the children. Before jurisdiction, the juvenile court cannot legally order a parent to drug test, but can order the agency to provide drug testing referrals, which the parent can choose whether or not to participate in. The disentitlement doctrine should be reserved for only the most severe of cases where it is impossible for a juvenile court to protect the child as a direct result of the parent's conduct. While the parents' pre-jurisdictional behavior does not extend to the disentitlement doctrine, it is not without consequence. Drug use, without more, is not jurisdictional, but here, given the parents' behavior while the agency was investigating and during the course of the case before jurisdiction was established, including being evasive, resisting the agency's investigation, resisting treatment, and the failure to take

proactive steps toward monitoring and treating the drug abuse, there was substantial evidence to support a finding of jurisdiction based on mother's drug abuse. Furthermore, substantial evidence existed to remove the children from both parents, including father, given their lack of progress in programs, resistant behavior to agency assistance, and the father's behavior, which included his continuing to deny mother's drug problem, and moving into an unsuitable home for children. The recent trend in interpreting section 361(c)(1) is, in fact, a misinterpretation of the statute. There is a limited rebuttable presumption in favor of removal under section 361(c)(1), but that only applies to cases where the children are adjudicated a dependent under section 300(e). In all other cases, there must be clear and convincing evidence to justify removal from parental custody. (KH)

Appeals—WIC 395

In re B.P.—published 6/2/2020; Second Dist., Div. Eight
Docket No.: B303804
Link to case: https://www.courts.ca.gov/opinions/documents/B303804.PDF

ORDERS ISSUED BEFORE THE DISPOSITIONAL ORDERS ON A SECTION 342 PETITION ARE INTERLOCUTORY AND NOT APPEALABLE.

The children, B.P., I.P. and M.M., were declared dependents pursuant to section 300(b) and placed with their mother. After a series of review hearings, concerns of substance abuse were raised by the agency. A section 387 supplemental petition was filed seeking detention from mother. The court denied the request and ordered mother into monthly testing. The court later issued a warrant detaining the children due to ongoing substance abuse and alleged domestic violence. A section 342 petition was subsequently filed. The court detained the children and set a future jurisdictional and dispositional hearing. Mother filed a notice of appeal challenging detention.

Dismissed. An order entered prior to disposition is interlocutory and not appealable. As with orders made on the original section 300 petition before the dispositional order, orders issued before the dispositional order on a section 342 petition are interlocutory and not appealable. The court disagreed with mother's suggestion that the detention order is appealable because it is an order after disposition of the original section 300 petition. A section 342 petition requires a new jurisdiction and disposition hearing, leading to a disposition order on the new allegations. As such, the court lacked jurisdiction to entertain mother's appeal. (MO)