



# Children's Law Center of California

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASELAW**

#### **UCCJEA—FC 3421**

*In re J.W.*—filed 8/11/20; Fourth Dist., Div. Two

Docket No. E074079; (2020) 53 Cal.App.5th 347

Link to Case: <https://www.courts.ca.gov/opinions/documents/E074079.PDF>

**WHERE THE UCCJEA IS NOT RAISED IN THE JUVENILE COURT, IT IS FOREFIETED AND CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL**

Approximately one month prior to the filing of the petition regarding J.W., mother and J.W. moved from Louisiana to California. Although the detention reports noted mother's recent move from Louisiana, the court did not address whether there was jurisdiction under the UCCJEA. At the jurisdictional and dispositional hearing, the juvenile court found the petition to be true, and ordered family reunification for mother and father. Again, the juvenile court did not address UCCJEA jurisdiction. Father made his first appearance at the 12-month review hearing, and again UCCJEA jurisdiction was not raised. Family reunifications services were terminated at the 18-month review hearing and parental rights were later terminated. Mother and father appealed.

Affirmed. Father contends for the first time on appeal that the juvenile court lacked jurisdiction under the UCCJEA and that, as a result, all findings and orders

made by the juvenile court as to J.W. must be reversed. The Court of Appeal does not address the merits of father's contention because even assuming the juvenile court lacked UCCJEA jurisdiction, father forfeited the ability to raise the arguments on appeal. Although the UCCJEA is a mandatory rule, it is not a rule implicating fundamental jurisdiction, which cannot be conferred by waiver, estoppel or consent. A lack of fundamental jurisdiction is an entire absence of power to hear or determine the case. However, the legislative intent regarding the UCCJEA is not that the rules be used in California in a manner that implicates a court's fundamental jurisdiction. The UCCJEA is a mandatory rule, which can lead to reversible error when its requirements are not met; however, where the UCCJEA is not raised in the juvenile court, it can be forfeited just like other mandatory rules. Equating UCCJEA jurisdiction with fundamental jurisdiction would constitute a wide exception to the finality afforded by WIC 366.26(i), which limits collateral attacks on termination orders to tribal customary adoptions, because a meritorious claim of UCCJEA error could undo a termination order despite the failure to raise the issue in juvenile court. There is no indication in the legislative history that our Legislature intended to create a UCCJEA exception to the near-total prohibition of collateral attacks on termination orders in dependency cases. (NS)

### **Substantial Detriment—WIC 366.22**

***Georgianne G. v. Superior Court***—filed 8/18/20; Second Dist., Div. Seven

Docket No.: B301629

Link to case: <https://www.courts.ca.gov/opinions/documents/B301629.PDF>

### **A PARENT'S LACK OF INSIGHT MAY BE CONSIDERED BY THE COURT IN ASSESSING WHETHER A CHILD MAY BE SAFELY RETURNED HOME**

The juvenile court took jurisdiction over the child, Lucas, due to domestic violence by his father against mother as well as her marijuana use. At disposition, the court issued a no contact order between the child and mother's new male companion due to his conviction for spousal rape (the victim being his former spouse). Lucas was later removed from mother due to her continued marijuana use and allowing her male companion to have contact with Lucas in violation of the no contact order. Reunification services were ordered. At the 18-month permanency review hearing, the agency recommended termination of reunification services because mother remained in a relationship with her male companion (now in his own reunification services with Lucas' younger sibling who had been removed from his parents due to mother's marijuana use). The agency pointed to mother's lack of insight as to how her actions had placed Lucas at risk. The juvenile court terminated mother's reunification services, finding that although she had completed her programs she was not in full compliance due to a lack of meaningful insight without which she would never be able to separate from her male companion nor assess whether he was safe to have around four-year-old Lucas. Mother had lived with her male

companion for the past two years, continued to be financially dependent on him, and was now pregnant with a second child with him. The juvenile court made brief reference to domestic violence between mother and her male companion that were noted in the sibling's reports but did not expressly rely on this in making its detriment finding. Mother filed a statutory writ.

Writ granted. Mother argued in her writ petition that the juvenile court may not consider insight in determining whether a child may be safely returned home, but caselaw firmly indicates that a parent's insight may be considered. Mother pointed to cases such as *M.G. v. Superior Court* (2020) 46 Cal.App.5th 646 to support her contention, but *M.G.* and other cases turned on the weight of the evidence, not because the consideration of parental insight was improper. Likewise, the issue in this case is whether the juvenile court had sufficient evidence that mother's lack of insight created a detriment preventing safe return. The juvenile court did not. While patterns of domestic violence are often repeated in new relationships, a finding of risk of harm to a child must be based on more than theoretical concerns. Further, whatever theoretical risk mother's male companion might pose could be neutralized by continuing court supervision and services while returning the child to his mother. (ML)