Children's Law Center of California

Dependency Cases: 2020 Year in Review

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*Cases reported may not be final. Case history should be checked before relying on a case. Cases and other material reported are intended for educational purposes only and should not be considered legal advice. All statutory references are to the Welfare and Institutions Code unless otherwise specified.

BYPASS PROVISIONS

***In re B.E.* (2020) 46 Cal.App.5th 932** — A parent's history of drug relapse does not establish that they resisted a court ordered treatment program pursuant to WIC 361.5(b)(13).

DISPOSITION

***In re A.C.* (2020) 54 Cal.App.5th 38** — Although not dispositive, a child's wishes are a factor to be considered when considering placement with a noncustodial parent.

***In re B.P.* (2020) 49 Cal.App.5th 886** — 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.

***In re D.P.* (2020) 44 Cal.App.5th 1058** — Incorporating dependency court order 415 into a removal order without stating facts that support removal does not comply with section 361(e).

***In re G.C.* (2020) 48 Cal.App.5th 257** — Where a dirty home is a reoccurring issue, there may be substantial evidence supporting removal even if the home is clean by the time of disposition.

***In re K.T.* (2020) 49 Cal.App.5th 20** — Ordering a parenting program for a non-offending parent, when there is no evidence that the program is necessary to the protection of the child, is an abuse of discretion.

***In re M.R.* (2020) 48 Cal.App.5th 412 —** In order to satisfy WIC 16501.1(g)(2), a case plan must identify specific goals and how each planned program is appropriate to meet those goals.

***In re S.P.* (2020) 53 Cal.App.5th 13 —** The juvenile court has the authority to decide whether dependent children should be vaccinated.

***In re V.L.* (2020) 54 Cal.App.5th 147 —** Substantial evidence supported removal of the minors from their father by clear and convincing evidence given the ongoing cycle of domestic violence and the recent violent mutual combat incident.

DUE PROCESS/NOTICE

***In re A.J.* (2020) 44 Cal.App.5th 652 —** An incarcerated parent's lack of proper notice for a jurisdiction and disposition hearing constitutes prejudicial error that requires reversal.

***In re Andrew M.* (2020) 46 Cal.App.5th 859 —** The juvenile court must appoint counsel for presumed parents who are incarcerated unless the parent knowingly and intelligently waives the right to counsel; incarcerated parents have a right to an attorney and to appear at a jurisdictional hearing.

***In re Christopher L.* (2020) 56 Cal.App.5th 1172 —** The harmless error analysis applies to juvenile dependency proceedings even where the error is of constitutional dimension.

***In re J.W.-P.* (2020) 54 Cal.App.5th 298 —** It was prejudicial error to fail to send father statutorily required notice advising him of the process for elevating his parentage status.

***In re Justin O.* (2020) 45 Cal.App.5th 1006 —** A custodial relative has standing to contest a WIC 387 petition where the relative's conduct and the removal of the minor from the relative's physical custody are at issue. A de facto parent has procedural due process rights *in addition to* a custodial relative and may participate as a full party to a contested hearing concerning the de facto parent's conduct, including at a WIC 387 adjudication.

INDIAN CHILD WELFARE ACT (ICWA)

***In re A.M.* (2020) 47 Cal.App.5th 303 —** Vague information about possible Native American ancestry with nothing more is enough to trigger the obligation for further inquiry but not the obligation to conduct formal ICWA notice.

***In re Austin J.* (2020) 47 Cal.App.5th 870** — In 2018, the Legislature changed the ICWA-related statutes. Based on the revised criteria of a "reason to know" in WIC 224.2(d), ICWA notice is triggered only when there is a reason to know or believe a child is an Indian child based on tribal membership, not ancestry.

***In re D.F.* (2020) 55 Cal.App.5th 558** — If, after further inquiry, the only information known is a mere suggestion of Indian ancestry, then the duty to provide formal ICWA notice is not triggered.

***In re D.S.* (2020) 46 Cal.App.5th 1041** — As long as the agency follows the procedure in section 224.2(e), further inquiry under ICWA is proper and adequate.

***In re M.W.* (2020) 49 Cal.App.5th 1034** — There was no reason to know child was an Indian child where no person having an interest in the minor (including the minor himself) informed the court that the minor was an Indian child, there was no information to suggest the minor had at any time lived on a reservation or been a ward of a tribal court, and there was no indication either the minor or the parents possessed an identification card indicating Tribal membership or citizenship.

***In re N.D.* (2020) 46 Cal.App.5th 620** — When there is reason to believe that the ICWA applies, a disposition hearing where the agency is seeking foster care placement of minors shall not be held until at least 10 days after receipt of the ICWA notice by the tribe. ICWA notice requirements do not apply when the minors are only removed from one parent and placed with their other parent.

***In re N.S.* (2020) 55 Cal.App.5th 816** — The juvenile court has the authority to terminate parental rights and order adoption in an ICWA case even when the Tribe is recommending legal guardianship; no exceptions to adoption, including Indian Child exceptions, applied in this case.

***In re T.G.* (2020) 58 Cal.App.5th 275** — The duty of further inquiry is triggered by affirmative statements of a parent that they *may have* Indian ancestry. Disagrees with holding in *In re Austin J.* (2020) 47 Cal.App.5th 870 that a parent stating *possible* Indian ancestry does not trigger the duty to further inquire.

JURISDICTION

***In re D.B.* (2020) 48 Cal.App.5th 613** — Jurisdiction is proper under section 300(c) where father exhibited violent behavior, verbally abused child, made racist comments, acted impulsively without restraint, and took no responsibility for his behaviors, causing severe anxiety. The juvenile custody order was within the court's authority and did not infringe on the family court's jurisdiction.

***In re E.E.* (2020) 49 Cal.App.5th 195** — 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.

In re J.A. **(2020) 47 Cal.App.5th 1036 —** Mere use of marijuana, even while pregnant, without more, is not enough to describe a child under section 300(b).

In re S.R. **(2020) 48 Cal.App.5th 204 —** Even if a parent successfully rebuts the WIC 355.1 presumption due to his sexual abuse conviction, the court is still entitled to consider the conviction and any reasonable inferences to be derived therefrom. Additionally, the principles of *In re I.J.* are applicable to the circumstances of a parent who possesses child pornography.

JUVENILE CUSTODY ORDERS

In re Anna T. **(2020) 55 Cal.App.5th 870 —** For juvenile custody orders to have continuing effect after termination of jurisdiction, they must be issued in compliance with section 362.4.

In re D.B. **(2020) 48 Cal.App.5th 613 —** Jurisdiction is proper under section 300(c). The juvenile custody order was within the court's authority under section 302 and did not infringe on the family court's jurisdiction.

PARENTAGE

In re J.P. **(2020) 55 Cal.App.5th 229 —** The juvenile court may reconsider previous paternity findings pursuant to section 385 and Family Code section 7642.

REASONABLE SERVICES

Serena M. v. Superior Court **(2020) 52 Cal.App.5th 659 —** The juvenile court failed to craft a flexible visitation plan that fits the needs of a family's unique circumstances, thereby denying mother reasonable services. Services must therefore be extended beyond the 18-month date.

RELATIVE AND SIBLING PLACEMENT

In re C.P. **(2020) 47 Cal.App.5th 17 —** An absolute statutory bar to placement because of a criminal conviction can be unconstitutional if the individual has a parental relationship with the child.

RESTRAINING ORDERS

In re E.F.* (2020) 45 Cal.App.5th 216, review granted June 17, 2020, No. S260839, 264 Cal. Rptr. 3d 290.** ******Not citable as binding precedent pursuant to Cal. Rules of Court, rule 8.1115.* ** — Contrary to the holding of *In re L.W.*, advance notice of a TRO request is *not* required. The plain language of WIC 213.5(c)(1) and Rule 5.630 authorizes the granting of a TRO without notice. WIC 213.5 still affords due process because the TRO is issued in advance of the RO hearing and the respondent gets notice and opportunity to oppose the request at the RO hearing.

***In re L.W.* (2020) 44 Cal.App.5th 44** — Advance notice of a TRO request is required. WIC 213.5 mandates that the TRO request be made in the manner provided by CCP 527 which in turn requires notice of the request unless "great or irreparable injury" to the applicant would otherwise result and the applicant gave notice of the hearing to the opposing party or in good faith tried to do so.

UCCJEA

***In re J.W.* (2020) 53 Cal.App.5th 347 —** If the UCCJEA is not raised in the juvenile court, it is forfeited and cannot be raised for the first time on appeal.

WIC 352

***In re D.N.* (2020) 56 Cal.App.5th 741 —** Poverty or a lack of housing is not a basis for a finding of detriment to return under the section 366.22 standard. Section 352 authorizes a court to continue reunification beyond 24 months if there are extraordinary circumstances at issue and so long as the continuance is not contrary to the interest of the minor.

***In re M.P.* (2020) 52 Cal.App.5th 1013 —** State of emergency due to COVID-19 pandemic constituted good cause to continue the section 364 hearing. However, the 8-month continuance was contrary to the interest of the minors, and the juvenile court's blanket prioritization schedule violated statutory time limits and Emergency Rule 6.

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WIC 364

In re T.S. **(2020) 52 Cal.App.5th 503 —** A parent is entitled to an evidentiary hearing at a section 364 judicial review. Requiring an offer of proof before granting a contested hearing under section 364 does not violate due process.

WIC 366.21 & 366.22

Georgeanne G. v. Superior Court **(2020) 53 Cal.App.5th 856** — A parent's lack of insight may be considered by the court in assessing whether a child may be safely returned home.

In re D.N. **(2020) 56 Cal.App.5th 741 —** Poverty or a lack of housing is not a basis for a finding of detriment to return under the section 366.22 standard. Section 352 authorizes a court to continue reunification beyond 24 months if there are extraordinary circumstances at issue and so long as the continuance is not contrary to the interest of the minor.

M.G. v. Superior Court **(2020) 46 Cal.App.5th 646 —** Mere speculation of a lack of insight is not enough to establish detriment to return to a parent.

Serena M. v. Superior Court **(2020) 52 Cal.App.5th 659 —** The juvenile court failed to craft a flexible visitation plan that fits the needs of a family's unique circumstances, thereby denying mother reasonable services. Services must therefore be extended beyond the 18-month date.

WIC 366.26

In re A.G. **(2020) 58 Cal.App.5th 973** — When a parent wishes to set a section 366.26 hearing for contest and raise the parental bond exception, a parent's offer of proof need only provide relevant and admissible evidence addressing visitation and the existence of a beneficial parent child relationship. When the record clearly shows regular parent-contact, the juvenile court must take caution before denying a contested hearing.

In re Mary C. **(2020) 48 Cal.App.5th 793 —** Where the agency's section 366.26 report fails to expressly address the prospective adoptive parent (PAP)'s understanding of the responsibilities of adoption, the PAP's understanding may be inferred from other evidence in the record. Only a preliminary assessment of the PAP's eligibility and commitment is required; the ultimate issue of the PAP's suitability to adopt is for the subsequent adoption proceeding.

***In re S.S.* (2020) 55 Cal.App.5th 355** — The juvenile court may not terminate parental rights based on problems arising from the parent's poverty when the agency did not allege those problems as a basis for removal. Although the trial court found by clear and convincing evidence that placing the child in father's custody would be detrimental to the child's well-being, the detriment finding was based on father's poverty, which is barred by statute and case law.

***In re Samantha H.* (2020) 49 Cal.App.5th 410** — When the statutory requirements are met to terminate parental rights and order adoption as the permanent plan, there is no additional requirement for the juvenile court to affirmatively ensure that the record reflects that a willing prospective non-relative adoptive parent previously considered the plan of legal guardianship and then rejected it before proceeding with adoption.

WIC 388

***In re I.B.* (2020) 53 Cal.App.5th 133** — Section 388 offers an escape mechanism that allows the juvenile court to consider new evidence after reunification services have been terminated. A change in circumstances analysis in domestic violence cases must recognize the unique facts and circumstances presented in every case and a best interest analysis may consider the relationship between siblings.

***In re J.M.* (2020) 50 Cal.App.5th 133** — It was an abuse of discretion to deny mother's 388 when she had completed her caseplan and addressed every other concern raised by the agency and the court.

***In re Samuel A.* (2020) 55 Cal.App.5th 1** — In order to summarily deny a section 388 petition, the juvenile court must decide whether it makes a *prima facie* showing of new evidence or a change of circumstances and that the requested relief would be in the child's best interest.

NON-DEPENDENCY CASES

***Conservatorship of O.B.* (2020) 9 Cal.5th 989 —** The clear and convincing evidence test does not disappear on appeal.

***O.C. v. Superior Court* (2020) 44 Cal.App.5th 76 —** When trial courts make special immigrant juvenile findings, it must do so based on state law.