



# Children's Law Center of California

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASELAW**

#### **WIC 366.26; Evidence Code 354(c)—Offer of Proof for Contested 366.26 Hearing**

*In re A.G.*—published 12/18/2020; Sixth Dist.

Docket No.: H047951

Link to Case: <https://www.courts.ca.gov/opinions/documents/H047951.PDF>

**AN OFFER OF PROOF FOR A CONTESTED 366.26 HEARING NEED NOT ADDRESS WHETHER THE EXISTENCE OF THE PARENT-CHILD RELATIONSHIP CONSTITUTES A COMPELLING REASON FOR DETERMINING THAT TERMINATION OF PARENTAL RIGHTS WOULD BE DETRIMENTAL TO THE CHILD.**

A.G. was placed in out-of-home foster care due to mother's substance abuse issues. Although some problems were noted during the visits, mother maintained regular and consistent visits throughout the proceedings. At the initial 366.26 hearing, mother requested a contested hearing on the potential application of two statutory exceptions to adoption, the parental bond and the sibling bond exceptions. The juvenile court requested an offer of proof before setting the 366.26 hearing for contest. Mother, through her counsel, made an oral offer of proof, but the court ordered mother's counsel to file a supplemental brief to present specific and articulable proof. Mother's written offer of proof identified nine witnesses who would be available to testify at the 366.26 hearing regarding mother's close relationship with the child and the child's attachment to mother. The Agency argued mother's offer of proof did not provide actual evidence to be produced and primarily gave conclusory and vague statements about the proffered witness testimony. Minor's counsel argued that the offer of proof provided no prospective evidence supporting the conclusion

that maintaining mother's parental rights outweighed the benefits to the minor of adoption. The juvenile court found mother's offer of proof to be insufficient and denied the hearing being set for contest. The juvenile court reasoned that mother's offer of proof provided categories of information and issues that would be addressed, without the specific articulable facts that mother would need to be able to raise to meet her burden of proof; therefore, the requirements of *Tamika T.* were not satisfied. Mother's parental rights were terminated. Mother appealed.

Reversed. The offer of proof must address two components of the parental relationship exception, namely, the parent's regular contact with the child, and the existence of a beneficial parent-child relationship. The offer of proof need not address the third component of the parental relationship, namely whether the existence of that relationship constitutes a compelling reason for determining that termination would be detrimental to the child. A parent's offer of proof should be viewed liberally in favor of the right to present his or her case at a contested hearing; therefore, when the record clearly shows regular parent-contact, the juvenile court must take caution before denying a contested hearing. If the parent's offer of proof addresses regular visitation and the existence of a beneficial parent-child relationship, it is for the juvenile court to carefully assess the child's relationship with the parent and then weigh the importance of that relationship against the benefit of adoption. Although mother's offer of proof was quite general and lacked specificity in certain regards, mother offered to present evidence concerning her visitation with A.G. and evidence about the nature and extent of the parent-child relationship; therefore, mother's offer of proof was sufficient. Requiring a parent's offer of proof to provide evidence addressing the juvenile court's detriment/benefit balancing analysis would provide uncertain standards. If the parent were required to show in his or her proffer that the parent-child relationship presented a compelling reason to forgo adoption, it would be a very rare case in which a parent's offer of proof would be found sufficient to warrant a contested hearing. (NS)

**Jurisdiction—WIC 300(b); Disposition—361(c)**

*In re K.B.*—published 01/05/2021; Second Dist., Div. Eight  
Docket No. B305420

Link to Case: <https://www.courts.ca.gov/opinions/documents/B305420M.PDF>

A CLINICAL DIAGNOSIS BY A MEDICAL PROFESSIONAL OR A DETERMINATION THAT A PARENT FALLS WITHIN ONE OF THE SPECIFIC DSM CATEGORIES IS NOT NEEDED TO CONCLUDE THAT THE PARENT IS A CURRENT SUBSTANCE ABUSER. A PARENT'S SUBSTANCE ABUSE COUPLED WITH A LACK OF SUPERVISION MAY SUPPORT JURISDICTIONAL FINDINGS AND REMOVAL.

At the detention hearing, minors (ages 14, 10, and 7) were ordered detained. The agency alleged that parents had a substance abuse problem and had tested positive for methamphetamines. The agency further alleged that mother had been under the influence of marijuana while caring for minors. The juvenile court sustained the allegations as to parents and removed the children. The juvenile court found that parents were in denial about their substance abuse, which had affected the children insofar as school officials

reported poor hygiene and school attendance issues for at least two minors. Reunification services for parents were ordered. Both parents appealed.

Affirmed. The jurisdictional findings and removal orders were correct. Mother challenges the finding that she abuses drugs. Mother cites to *In re Drake M.* (2012) 211 Cal.App.4th 754, and argues that she has neither been clinically diagnosed with a substance abuse disorder nor been shown to fit a clinical definition from the DSM-IV or DSM-V. Her argument is unavailing, as neither showing is required to establish that a parent/ guardian is a current substance abuser. That formulation from *In re Drake M.* is rejected here, just as it was in *In re Rebecca C.* (2014) 228 Cal.App.4th 720 (also Second Appellate District). Ample evidence established mother's substance abuse. Mother had one positive test. Mother was actively hiding her ongoing addiction, based on her admissions and inconsistent statements. She ultimately admitted to methamphetamine and marijuana use. Father was similarly situated. He confessed to a substantial substance abuse history, and he had one positive test. Parents' substance abuse placed minors at substantial risk of physical harm because parents left the children unsupervised for most of the time they were home. Mother would go to sleep at about 5:00 pm every evening, and father would usually stay in his room. Minors' spotty school attendance and poor hygiene were consistent with the finding that parents failed to supervise minors. Sufficient evidence supported the jurisdictional findings and dispositional orders. (AMC)

## **WIC 387**

*In re Brianna S.*—published 1/28/2021; Second Dist., Div. Two

Docket No. B301802

Link to case: <https://www.courts.ca.gov/opinions/documents/B301802.PDF>

**WHEN REMOVING A CHILD FROM A RELATIVE CAREGIVER, THE PROPER PROCEDURE TO FOLLOW IS THAT SET OUT IN WIC 387, NOT WIC 385.**

Three children were placed with their grandmother, who was declared to be their de facto parent. While in the care of the grandmother, the mental and/or emotional health of all the children deteriorated greatly. Grandmother did not address the issues and became difficult to work with when the agency attempted to help. In October 2019, the agency gave notice to the grandmother that it was seeking to remove the minors from her and filed a WIC 387 petition in court, alleging that the home did not meet minimum standards under the RFA process, that she failed to obtain mental health services, and that she emotionally abused one of the children by threatening to institutionalize her. At the hearing, the agency withdrew the 387 petition, believing that it was not necessary for removal from a de facto parent. The agency asked for removal under WIC 385, the juvenile court deemed the 387 petition a 385 request, and then grandmother's counsel was allowed to argue. Based on the agency's report, the juvenile court removed the children from the grandmother because it was in their best interest and their physical, mental, and emotional health were "at risk" were they "to remain in the care of" grandmother. Grandmother appealed.

Affirmed. The appropriate procedural vehicle when seeking removal of a child from a relative is WIC 387. The plain language of WIC 387 is clear that it applies when seeking to remove a child from a relative. While both WIC 385 and 387 authorize a juvenile court to

modify dispositional orders, WIC 385 does so generally, and WIC 387 more specifically applies to placement orders, and thus controls over 385's general language. Additionally, precedent supports WIC 385 being reserved for situations not specifically set out in the more specific procedural requirements of WIC 387 and WIC 388. A relative's status as a de facto parent does not negate their status as a relative. De facto status gives the relative procedural rights but does not dictate the procedural vehicle for removing a child from their care. A 387 petition seeking to remove a child from a parent requires removal findings under WIC 361(c), but a 387 seeking to remove a child from other types of caregivers, such as a relative, requires only a finding that the caregiver is "no longer able to provide the...child a secure and stable environment." (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1201.) In this case, while the juvenile court erred by following WIC 385 instead of WIC 387, the error was not prejudicial because the grandmother received all the due process she would have been afforded under WIC 387 since the agency followed the WIC 387 procedures until the last minute at the hearing. Further, the juvenile court's order was supported by substantial evidence, since there was ample evidence that the grandmother was no longer able to provide a secure and stable environment. (KH)