Children's Law Center of California

"DEPENDENCY LEGAL NEWS"

Vol. 17, No. 4: July 13, 2021
Issued by the Children's Law Center of California on the second Tuesday of each month.
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NEW DEPENDENCY CASELAW

Appeals—Mootness

In re Rashad D.—published 4/19/21; Second Dist., Div. Seven
63 Cal.App.5th 156
Link to case: https://www.courts.ca.gov/opinions/documents/B307061.PDF

FAILURE TO APPEAL TERMINATION OF DEPENDENCY JURISDICTION AND CONCURRENT JUVENILE CUSTODY ORDER RENDERS APPEAL OF JURISDICTIONAL ISSUES MOOT

Rashad D., at age 3, was the subject of a section 300(b) petition alleging he was at substantial risk of serious physical harm due to mother's lengthy drug history and recent relapse. Mother had a past history of using cocaine and PCP, which was the subject of a dependency case when Rashad was six months old. In the present case, the referral came in because mother's family suspected she had relapsed but there was no evidence she had started using drugs. The court sustained a heavily amended petition taking out reference to current use and finding Rashad described by section 300(b) based on mother's drug history. Rashad remained in mother's custody and a three-month section 364 hearing was set. Mother timely appealed the jurisdiction and disposition orders. At the three-month review hearing, the juvenile

court terminated jurisdiction and ordered sole physical custody to mother and joint legal custody for mother and father. Mother did not appeal these orders.

Dismissed. Courts of appeal cannot act or rule upon a question that is speculative or theoretical; an appeal is moot when the appellate court cannot provide any effective relief if it finds reversible error. In order for the court of appeal to order reversal or modification of a jurisdictional or dispositional order, the juvenile court must have jurisdiction over the child to change the prior order. Here, the juvenile court no longer had jurisdiction, and to the extent mother sought to modify the juvenile custody order or argue that the court's jurisdictional findings led to an adverse juvenile custody order, this Court cannot provide any effective relief because the termination of jurisdiction was not appealed and is not before the Court. (SH)

ICWA—WIC 224.2

In re S.R.—published 05/18/2021; Fourth Dist., Div. Two
64 Cal.App.5th 303
Link to Case: https://www.courts.ca.gov/opinions/documents/E076177.PDF

THE DUTY OF FURTHER INQUIRY UNDER ICWA IS TRIGGERED BY AFFIRMATIVE STATEMENTS BY A RELATIVE THAT THE CHILDREN MAY HAVE INDIAN ANCESTRY

Mother and father were present at the initial detention hearing. Both denied Indian ancestry. The juvenile court found that ICWA did not apply. The parents failed to reunify, and maternal grandparents sought custody. At a permanency planning review hearing, maternal grandparents appeared in person and completed forms, indicating that the children had Indian ancestry. In particular, maternal grandfather specified that minors' great-grandmother, who resided with maternal grandparents, was a member of the Yaqui tribe of Arizona. The juvenile court did not ask about the grandparents' claimed Indian heritage at the hearing. The agency did not inquire further. At a later 366.26 hearing, the juvenile court took judicial notice of all prior findings, including the initial finding that ICWA did not apply, and terminated parents' parental rights. Mother appealed.

Conditionally reversed and remanded with instructions. The juvenile court erred in failing to ensure the agency conducted a proper further ICWA inquiry after the grandparents asserted that the children had Indian ancestry. Pursuant to section 224.2, the juvenile court and the agency have an ongoing duty to inquire if a child is an Indian child. (WIC 224.2, subd. (a).) This duty is divided into three phases: the initial duty to inquire, the duty of further inquiry, and the duty to send ICWA

notice. In this case, during the initial duty to inquire, the parents denied having Indian ancestry. Subsequently, the grandparents completed forms, indicating that the children had Indian ancestry through their great-grandmother, who they said was an Arizona Yaqui. The duty of further inquiry is triggered if information becomes available suggesting a child may have an affiliation with a tribe, even if the information is not strong enough to require statutory notice requirements. In this regard, this Court disagrees with *In re Austin J.* (2020) 47 Cal.App.5th 870 and its narrow reading of the type of information sufficient to trigger the duty of further inquiry, which focused on tribal membership or biological ties to a member. Instead, this Court agrees with the broader approach of *In re T.G.* (2020) 58 Cal.App.5th 275, which emphasized that the question of tribal membership is determined by tribes, not by courts or child protective agencies. The very specific evidence of Indian ancestry outlined in the maternal grandparents' disclosures provides a reason to believe the minors are Indian children, even if that evidence does not directly establish the children or their parents are members or eligible for membership. Accordingly, the evidence triggered a duty for the agency to inquire further pursuant to section 224.2, subdivision (e). Among other things, the agency must interview the parents and extended family members and contact the Yaqi tribe of Arizona. From there, further proceedings must be held, consistent with the instructions of this Court. (AMC)

Non-Minor Dependent Re-Entry—WIC 388.1

In re N.A.—published 5/21/21; Fourth Dist., Div. One
64 Cal.App.5th 494
Link to case: https://www.courts.ca.gov/opinions/documents/D077956.PDF

IN ORDER FOR YOUTH TO BE ELIGIBLE FOR REENTRY UNDER WIC 388.1, THEIR CAREGIVER/GUARDIAN MUST BE VALIDLY RECEIVING AFDC-FC FUNDS AFTER THE YOUTH TURNS 18

N.A. became a dependent at age 11, entered a legal guardianship at age 15, and jurisdiction was terminated shortly thereafter. The guardian received funding with dependent children-foster care (AFDC-FC) for N.A. past N.A.'s 18th birthday, however, N.A. moved out of the guardian's home when she was 17 years old. Neither the guardian nor N.A. informed the county agency of the move. N.A. petitioned to return to juvenile court jurisdiction and foster care under WIC 388.1 after she turned 18. Upon learning that N.A. moved from the guardian's home prior to her 18th birthday, the county agency retroactively terminated AFDC-FC payments to the guardian. The county agency recommended the court deny N.A.'s petition for reentry pursuant to WIC 388.1 subdivision (a)(2) [qualified petitioners

include "nonminor former dependent…who received…aid after attaining 18 years of age"].) The juvenile court denied N.A.'s petition for reentry under WIC 388.1, and ordered the county agency to notify N.A. directly of its eligibility determination so she could pursue administrative remedies. N.A. appealed.

Affirmed. In order for a petitioner to reenter the juvenile court's jurisdiction pursuant to 388.1 subdivision (a)(2), the petitioner must *validly* receive AFDC-FC payment after 18. The relevant inquiry is whether the guardian was eligible, or legally entitled, to receive AFDC-FC payments after N.A. turned 18, not merely whether the guardian in fact received such payments. When the Legislature required a nonminor to "receive" the specified financial aid, it did not intend to include situations in which the financial aid was inadvertently or mistakenly paid, or unlawfully received. To achieve the legislative goal, the aid that was "received" by N.A. after turning 18 must have been aid to which the recipient was eligible or legally entitled to receive. Here, the county agency demonstrated that it retroactively terminated AFDC-FC payments to the guardian. As a result, N.A. did not meet the requirements for reentering the dependency system under section 388.1 because she was not validly receiving financial aid at the time she turned 18. (ME)