



# Children's Law Center of California

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASELAW**

#### **Jurisdiction—current risk; WIC 300(b)**

*In re Emily L.*—filed 11/29/21, Cert. for Publ. 12/21/21; Second Dist., Div. Eight Docket No. B309567

Link to case: <https://www.courts.ca.gov/opinions/documents/B309567.PDF>

**THE QUESTION UNDER WIC 300 IS WHETHER CIRCUMSTANCES AT THE TIME OF THE JURISDICTIONAL HEARING SUBJECT THE CHILD TO THE DEFINED RISK OF HARM; PREVIOUS ACTS ALONE ARE NOT ENOUGH.**

Mother and 16-year-old Emily had a history of physical altercations in the presence of 7-year-old sibling, Andrew. The most recent altercation included punching, mutual shoving and hair pulling, and mother choking Emily. Emily was also violent with her father. She stole, ditched classes, stopped doing schoolwork, stayed out late or all night, and smoked marijuana. In October 2019, the agency filed a petition pursuant to section 300(a) and (b) based on mother's physical abuse of Emily and father's failure to protect, the parents' inability to appropriately care and supervise Emily due to her behavioral problems, and the

parents' failure to get Emily into services to address her marijuana use. At the initial hearing in November 2019, the court detained Emily from mother and released her to father; Andrew was released to mother with conditions. For various reasons including the pandemic, the jurisdictional hearing was not held until 13 months later. During those 13 months, several events occurred: Andrew, who was diagnosed with cancer, was hospitalized. In December 2019, the court ordered unmonitored visits for Emily and mother at the hospital only. By March 2020, the court gave mother unmonitored visits, including a weekly overnight visit. Mother continued to work full-time and go straight to the hospital for Andrew; she was fully engaged in his treatment and had no time for programs. In May (six months after detention), Emily started wraparound services. In June, Andrew died. Mother tried to get Emily into grief counseling but there would be a three-month wait. Emily was also allowed on an extended visit with mother from June to September. By then, Emily and mother were reportedly not making themselves available for services, but Emily's behavior had improved so much that she was no longer eligible for wraparound. Nor was she eligible for individual counseling because she had private insurance through her parents. Father now reported Emily was doing well at home, school, and during her visits with mother. Emily had changed "drastically" – she was attending school, turning in assignments, had improved her grades, caught up in credits, and respected home rules. In November, she began counseling arranged by father through his insurance. However, DCFS continued to report the parents were being uncooperative. At the December 2020 jurisdictional hearing, the parents and Emily moved to dismiss the petition as the case issues had resolved. DCFS wanted jurisdiction based on the parents' lack of cooperation. The court dismissed father from the petition and sustained the petition as to mother and Emily based on mother's lack of cooperation and because it wanted to ensure mother was given services. The court ordered 360(b) supervision. Mother appealed.

Reversed with directions to dismiss the petition. (1) The agency moved to dismiss the appeal for mootness because Emily had turned 18 during the appeal. The Court declined to dismiss as the jurisdictional findings described acts of violence on a child that could prejudicially affect mother with her inclusion in the Child Abuse Central Index (CACI) and because the appeal presented an important legal issue. (2) There was insufficient evidence to support the jurisdictional findings. The question under WIC 300 is whether circumstances *at the time of the hearing* subject the child to the defined risk of harm. Here, by the time of the jurisdictional hearing, Emily had turned her life around. There was no evidence she was still quick to anger, prone to violence, was smoking marijuana, ditching school, staying out late or all night, or otherwise breaking rules. Instead, she was attending school, getting good grades, had caught up in credits, respected rules, and, most importantly, was not fighting verbally or

physically with her family members, including mother. Whether this transformation occurred because of her brother's tragic death, being away from negative influences, the little therapy she managed to receive, or because she matured, by the time of the jurisdictional hearing there was insufficient evidence of any risk of future harm. This case is similar to *In re Ma. V.* (2021) 64 Cal.App.5th 11 where the mother also had an unusually long time due to the pandemic to resolve the case issues by the jurisdictional hearing. The *Ma. V.* Court recognized that a parent's displeasure with governmental interference is to be expected and that the parent's inability to get along with the social worker is not in itself evidence of risk of harm or detriment to the child. (ML)

**Parental-Benefit Exception: WIC 366.26(c)(1)(B)(i)**

*In re L.A.-O*—published 12/27/21; Fourth Dist., Div. Two

Link to case: <https://www.courts.ca.gov/opinions/documents/E077196.PDF>

CONSISTENT WITH CADEN C., THE TERM “PARENTAL ROLE” SHOULD NOT BE USED TO DESCRIBE AND DISCUSS THE PARENTAL-BENEFIT EXCEPTION.

Evidence presented at a 366.26 hearing showed that parents had consistent supervised visitation once a week, for two hours. Despite parents reporting that the visits went well, the agency presented evidence that the visits actually upset the children. The juvenile court found that visits were regular but of poor quality and that the parents had not acted in a parental role in a long time. Furthermore, the court found that the benefits of being adopted by caregivers who had acted in a parental role outweighed the detriment of the termination of parental rights. After finding that the 366.26(c)(1)(B)(i) parental-benefit exception did not apply, the court terminated mother's and father's parental rights to their three children. Parents appealed, contending the juvenile court erred when it required a showing that the parents acted in a parental role and when it ignored evidence related to the parental-benefit exception in earlier reports.

Reversed and remanded. It was unclear whether the juvenile court's ruling conformed with *Caden C.* because it used the term “parental role” when determining the parental-benefit exception did not apply. The parental role requirement, though well-established, is not well-defined and when used standing alone can have several different meanings. Parental role can mean that the parent is the child's primary attachment, is a good parent, or gives parental care, such as changing diapers, providing toys and food, and helping with homework; none of which standing alone are required to show the parental-

benefit exception. *Caden C.* cautioned that rarely do parent-child relationships conform to an entirely consistent pattern. *Caden C.* did not use the words “parental role” to describe and discuss the parental-benefit exception, so it is better the words are not used at all. The focus is whether there is a substantial, positive emotional attachment between the parent and the child. Regarding evidence not considered in earlier reports, the juvenile court cannot consider evidence that is not contained in the 366.26 report or admitted and received into evidence. (NS)