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NEW DEPENDENCY CASELAW

Detriment – WIC 366.22

Sarah K. v. Superior Court – published 1/17/2023; First Dist., Div. Two
Docket No. A165607

Link to Case: <https://www.courts.ca.gov/opinions/documents/A165607.PDF>

THE IMPACT OF REMOVING A CHILD FROM A LONG-TERM FOSTER HOME MAY BE CONSIDERED WHEN ASSESSING DETRIMENT; SOCIAL WORKERS MAY BE QUALIFIED AS EXPERTS.

Infant, A.G., and her 14-year-old half-sister, S.K., came to the agency's attention after A.G.'s father violently attacked mother. Mother reported extensive substance abuse history. She also had prior child welfare history and lost custody of another child. A.G. and S.K. initially remained in mother's care, but after mother relapsed in September 2020, A.G. was removed. Over the next year, mother took steps to achieve sobriety, including completing a residential treatment program, but she relapsed several times, was initially dishonest about her substance use, and stopped attending outpatient programs. After testing positive for methamphetamine in September 2021, mother re-enrolled in treatment, and the juvenile court extended mother's

family reunification services to the 18-month date. At the section 366.22 hearing, evidence suggested mother had been committed to her sobriety. All her drug tests were negative, she engaged in outpatient treatment, had a sponsor, and the agency reported mother changed her phone number and deactivated social media to break ties with negative influences. She also regularly visited A.G. The agency recommended sending half-sibling, S.K., on an extended visit with mother, but asked the court to terminate mother's reunification services with respect to A.G. During the contested .22 hearing, the social worker was designated an expert in social work and the assessment of substance abuse. The social worker testified that mother had been doing well for the past period of review, but questioned her ability to maintain her sobriety. She further opined that it would be detrimental for A.G. to be removed from the foster home where she resided for the past year. Despite mother's progress, the court terminated mother's services, finding that return would be detrimental to A.G. due to mother's dependency history, her past relapses, and the significant emotional attachment A.G. had with her foster family. Mother timely appealed.

Affirmed. Mother's commitment to sobriety came late in dependency proceedings, and there was substantial evidence to support the juvenile court's finding of detriment due to a possibility of future relapse. At the time of the 18-month review hearing, mother was still participating in a structured outpatient program, and the social worker, whom the trial court qualified as an expert in substance abuse, testified that she was concerned mother would not be able to maintain her sobriety without supervision. The trial court properly relied on the social worker's expert testimony. Furthermore, in determining whether return of a child to a parent's custody would create a substantial risk of detriment, a trial court may weigh the emotional damage of removing a child from placement. The agency's reports and the social worker's testimony demonstrated that A.G. had developed a strong bond with her foster family in the year she had resided with them, and that she had exhibited behavioral issues, namely compulsive itching, following her separation from a prior foster family. The trial court properly relied on the social worker's expert testimony that stability was crucial for a child of A.G.'s age, and that severing A.G.'s relationship with her foster family would be detrimental to her emotional wellbeing. In dissent, Justice Stewart argued that any finding that A.G. was at substantial risk was speculative, as mother had remained sober between the 12-month and 18-month review hearings. The juvenile court, Justice Stewart argued, improperly relied on the vague opinions of a social worker. Family preservation is the goal of the dependency system, and the court only shifts its focus to permanency and stability for the child after terminating a parent's reunification services. (SL)

Appeals - Mootness

In re D.P.—published 1/19/23; California Supreme Court
Docket No. S267429

Link to case: <https://www.courts.ca.gov/opinions/documents/S267429.PDF>

ON APPELLATE REVIEW, COURTS SHOULD ENGAGE IN A TWO-PART ANALYSIS WHEN PARTIES RAISE MOOTNESS ISSUES: (1) IF A PARENT DEMONSTRATES A SPECIFIC LEGAL OR PRACTICAL CONSEQUENCE THAT WILL BE AVERTED ON REVERSAL, THE CASE IS NOT MOOT AND REQUIRES REVIEW; (2) EVEN IF THE CASE IS MOOT, AN APPELLATE COURT STILL HAS THE DISCRETION TO DECIDE THE MERITS OF THE CASE.

The agency filed a petition pursuant to section 300(b) of the Welfare and Institutions Code in 2019 concerning 5-year-old B.P. and two-month-old D.P. after mother and father brought D.P. to the hospital because D.P. was having difficulty breathing. Upon examination, hospital staff found D.P. had pneumonia as well as a single healing rib fracture. After a contested Adjudication trial with testimony from two expert witnesses, the juvenile court sustained an amended b-count against both parents concerning D.P. and dismissed the count concerning B.P. The juvenile court then released D.P. to both parents under informal supervision pursuant to section 360(b). Both parents appealed the jurisdictional finding against them. However, while the appeal was pending, the juvenile court terminated jurisdiction, finding the parents had complied with their services and D.P. was no longer at risk. The Court of Appeal dismissed the parents' appeal based on mootness because of the juvenile court's termination of jurisdiction. Father filed a petition for review, which was granted.

Reversed. A case becomes moot when the court cannot provide any effective relief for the party seeking judgement. For relief to be effective, the party must specify an ongoing harm and the harm must be capable of being rectified by the court. Mootness applies in the dependency context as well. An appellate court must review on a case-by-case basis whether subsequent events in a juvenile dependency matter render the case moot. Even if the juvenile court has terminated jurisdiction, a jurisdictional finding may be subject to challenge if the order continues to impact a parent's rights, if for instance it restricts visitation or custody. Alternatively, if no juvenile court order exists impacting a parent's rights, the party must demonstrate that they have suffered from a tangible harm that is capable of being redressed by a favorable court decision. In this case, father argued his appeal was not

moot because the jurisdictional finding was stigmatizing and would possibly result in his inclusion with California's Child Abuse Central Index (CACI). However, father's claims were speculative as he did not demonstrate that the b-count sustained against him was reported for inclusion in the CACI, nor did it appear that the agency would be reporting him. Therefore, father's challenge to the jurisdictional finding is moot. Even if father's case is moot, appellate courts have the inherent discretion to address the merits of a case. Many features of dependency proceedings make appeals in this area particularly prone to mootness issues, given these cases often rely on historical facts and are generally resolved in an expeditious manner. Appellate courts may consider whether the order was prejudicial, egregious, or whether principals of fairness otherwise favors discretionary review. The Court of Appeal in this case erroneously concluded it could only consider a moot appeal if father presented specific legal or practical negative consequences. Accordingly, the case is reversed and remanded to the Court of Appeal to consider discretionary review in light of the principles and factors in this opinion. (SW)

Beneficial Parental Relationship Exception – WIC 366.26

In re M.V. — published 1/27/23; Second Dist., Div. Eight
Docket No. B315297

Link to case: <https://www.courts.ca.gov/opinions/documents/B315297.PDF>

[1] WHERE AN INITIAL BONDING STUDY FAILS TO ANALYZE THE *CADEN C.* FACTORS, THE NATURE OF MINOR'S ATTACHMENT TO HER PARENTS, OR THE EFFECT THAT SEVERING THAT RELATIONSHIP WOULD HAVE ON MINOR, A SUPPLEMENTAL BONDING STUDY MAY BE ORDERED. [2] IN ASSESSING THE BENEFICIAL RELATIONSHIP EXCEPTION, IT IS REVERSIBLE ERROR FOR A JUVENILE COURT TO REDUCE THE SECOND ELEMENT OF THE BENEFICIAL RELATIONSHIP EXCEPTION TO "A BOND," THEREBY FAILING TO EXAMINE THE PARENT-CHILD RELATIONSHIP, AND TO RELY ON IMPROPER FACTORS SUCH AS POST-ADOPTION CONTACT IN EVALUATING DETRIMENT.

In 2018, the agency filed a petition, alleging 4-year-old M.V. came within the jurisdiction of the juvenile court under section 300(b)(1) and (d) after thousands of pornographic images of children under the age of 13, including images suspected to be of M.V., were found at the family's home and on parents' phones. At the initial hearing, M.V. was detained from her parents and placed with paternal grandparents, who had provided caretaking for M.V. since she was born. From early in the case, parents and paternal

grandparents gave conflicting accounts regarding the quality of M.V.'s interactions with the parents, M.V.'s bond with her parents, and the appropriate ways to discipline M.V. At the jurisdictional hearing, the court sustained allegations under section 300(b) and (d) relating to the sexual exploitation of M.V., removed M.V. from her parents, and ordered reunification services. After a contested 18-month review hearing, the court terminated reunification services, set a 366.26 hearing, and ordered a bonding study. After the court-appointed expert, Dr. Crespo, filed his report, the parents' attorneys advised the court that the report was inadequate and asked for a supplemental report that addressed the impact on M.V. if the parental relationship were severed. The court refused. At the continued 366.26 hearing, parents argued that the beneficial relationship exception to adoption applied, and the agency and minor's counsel argued to terminate parental rights. The juvenile court terminated parental rights. Parents appealed.

Reversed and remanded. [1] The juvenile court erred when it failed to order a supplemental bonding study after receiving a nonresponsive evaluation; thus, a new bonding study must be prepared. Bonding studies supply expert opinion about the psychological importance to the child of the relationship with his or her parent(s) to assist the court in determining whether "the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i); see *In re Caden C.* (2021) 11 Cal. 5th 614, 632–633.) Here, although the agency regularly reported M.V.'s positive statements about her parents and observed that she and her parents were bonded, the record lacked independently obtained information regarding the quality of her interactions with the parents or the importance of these relationships to M.V. In this regard, the adults in M.V.'s life gave conflicting accounts of her behavior, attachments, and relationships that tended to align with their preferences for her ultimate placement. Thus, a bonding study was appropriate. However, Dr. Crespo's report was deficient. Its errors included, *inter alia*, failing to consider the proper factors identified in *Caden C.* (i.e., the age of the child, the portion of the child's life spent in the parent's custody, the positive or negative effect of the interaction between parent and child, and the child's particular needs), failing to observe visits between M.V. and her parents and instead using the two visits to question M.V. and others, not speaking to either parent about the nature or significance of M.V.'s relationship to them, and opining on topics beyond the scope of the assessment (i.e., parents' inability to provide for M.V.'s needs, the likelihood they could regain custody, etc.). Considering Dr. Crespo's observational failures and nonresponsive report, the juvenile court's ongoing need for information to

evaluate the beneficial relationship exception, and the fact that argument could not supply the observations and expert analysis that a true bonding study provides, the juvenile court abused its discretion in not ordering a supplemental bonding study in this case. [2] The juvenile court erred in relying upon Dr. Crespo's deficient report to determine that the beneficial parental relationship exception did not apply; thus, a new 366.26 hearing must be conducted. Here, the juvenile court failed to properly evaluate whether M.V. had a substantial positive emotional relationship with her parents (element 2), instead reducing this element to whether "a bond" existed. Additionally, the court relied on improper factors (i.e., consideration of the extent to which M.V. may have post-adoption contact with the parents, weighing the pros and cons of adoption versus legal guardianship, etc.) when it tried to determine whether termination of parental rights would be detrimental to her (element 3). By failing to determine whether M.V. had a substantial, positive attachment to her parents and by relying on improper factors in assessing detriment, the court failed to perform the appropriate analysis when determining if the beneficial parental relationship exception applied. (AMC)

Bypass Provisions—WIC 361.5(b)(6)

In re T.R.—published 1/27/23; Fourth Dist., Div. Two
Docket No. E079291

Link to case: <https://www.courts.ca.gov/opinions/documents/E079291.PDF>

TO DENY REUNIFICATION SERVICES UNDER WIC 361.5(B)(6), THE AGENCY MUST PROVE BY CLEAR AND CONVINCING EVIDENCE BOTH ACTUAL SEVERE PHYSICAL HARM IN THE CURRENT CASE AND THAT REUNIFICATION SERVICES WOULD NOT BENEFIT THE CHILD

In 2021, sisters Taylor and Teegan and their two maternal half-siblings were removed from their parents in part due to domestic violence and excessive corporal punishment. Taylor and Teegan's father choked one of the half-siblings and pulled another off a bed by her hair. He also hit all four children with belts. At the dispositional hearing, father presented evidence that since the initial hearing, he had shown remorse in individual counseling and completed a parenting class and domestic violence programs. The agency submitted evidence from a previous dependency case in 2013 in which the petition alleged father had caused burns to a half-sibling and mother had been ordered to stay away from father, and another prior case in 2016 and 2017 for Taylor and Teegan based on domestic violence and father's drug use and criminal activity. In the 2016 and 2017 cases, father had been bypassed

under WIC 361.5(b)(6). At the dispositional hearing, the court adopted the agency's recommendation to deny father reunification services because he "failed to meet his burden once the bypass has been established." The court did not specify which bypass provision it relied on but adopted all findings and orders from the agency's report which had identified WIC 361.5(b)(6) as the applicable provision. Father appealed the denial of reunification services.

Affirmed in part and reversed in part. There was insufficient evidence to support a denial of services under WIC 361.5(b)(6). This provision has two prongs: (1) a finding of actual severe physical harm to the child, sibling, or half-sibling by the parent, and (2) that reunification services for the offending parent would not benefit the child. The record did not contain substantial evidence from which a reasonable fact finder could have found it highly probable that father inflicted severe physical injury. Here, the juvenile court did not state for the record which bypass applied, did not identify the infliction of severe physical harm, and did not address whether the minors would benefit from reunification with their father. There was no evidence that the choking or hair pulling resulted in injuries to the girls, that it left marks or bruises, nor of how hard father touched the girls or whether they felt pain. Thus, there was no basis from which to conclude father inflicted severe physical harm on his daughters or their half-sisters. Further, evidence of severe injury from a prior dependency case cannot be the basis for bypass in the current case. While some bypass provisions can be triggered by events from previous dependencies, WIC 361.5(b)(6) applies to the infliction of severe physical harm that led to the current dependency. Turning to the second prong, the agency also failed to prove by clear and convincing evidence that the girls would not benefit from reunification services when father had engaged with predisposition services, shown remorse and a willingness to change, and Teegan reported that her family was "her life." Only after the agency has proven both prongs does section 361.5(c)(2) apply, which shifts the burden to the offending parent to prove that reunification is in the child's best interest. (LL)

**Detention Findings – WIC 319; Failure to Protect – WIC 300;
Noncustodial Parent – WIC 361.2; Case Plan – WIC 16501.1**

In re M.C. – published 2/6/2023; First Dist., Div. Two
Docket No. A165424

Link to Case: <https://www.courts.ca.gov/opinions/documents/A165424.PDF>

[1] AN ALLEGED FATHER IS NOT A “PARENT” UNDER SECTION 319 AND IS NOT ENTITLED TO CUSTODY NOR THE BENEFITS OF RELATIVE PLACEMENT PREFERENCE. [2] A PARENT REASONABLY SHOULD HAVE KNOWN OF ANOTHER PARENT’S SUBSTANCE ABUSE IF A MORE CONSISTENT PRESENCE IN THE CHILD’S LIFE WOULD HAVE REVEALED SUCH ABUSE. [3] AN IMPERFECT PLAN OF CARE FOR A CHILD IS INSUFFICIENT ALONE TO JUSTIFY A DETRIMENT FINDING UNDER SECTION 361.2, SUBDIVISION (A).

The child, M.C., came to the attention of the agency after Mother gave birth to M.C.’s newborn sibling and tested positive for methamphetamines and marijuana. M.C. had a different father than his newborn sibling. M.C.’s father was a professional truck driver and was in Michigan at the time of the referral. Father reported he left M.C. with Mother four days prior. Father felt he had to leave M.C. with Mother because he had no other option as he had to travel for work. He had no prior child welfare history. He also disclosed being aware of Mother’s past methamphetamine use, but was unaware of her currently using. Father was named a failure to protect because he, “knew or reasonably should have known Mother was continuing to use methamphetamine and marijuana during her pregnancy.” At the detention hearing, the juvenile court detained from Father and found him to be an alleged father. At the jurisdiction hearing, Father’s paternity status was elevated to presumed. Father testified he worked as a professional truck driver and prepared a plan with M.C.’s paternal great-aunt and great-uncle for M.C. to live with them while he was working. Father’s ex-wife testified she had three children with Father and he had always provided for them. The social services supervisor testified Father had been offered weekly visits, but had been sporadic in attendance due to his work. She also voiced concerns with Father’s plan of care because the great-aunt and great-uncle only spoke Spanish and M.C. spoke primarily English. The petition was sustained and named Father as a failure to protect. Father was also found to be a noncustodial parent and a detriment finding was made pursuant to section 361.2, subdivision (a). The agency characterized Father as putting his job over the needs of M.C. In making its removal findings, the juvenile court focused primarily on discussing the court’s future expectations of Father—participating in parenting classes and more regular visitation. Father timely appealed the detention, jurisdiction and disposition orders.

Affirmed in part and reversed in part. [1] The detention orders were affirmed. At the time of detention, Father was only an alleged father. As an alleged father, Father's rights were limited. An alleged father is not a "parent" within the meaning of section 319. As such, he was not entitled to custody. Due to his alleged status, relative placement preference was also not applicable under section 319, subdivision (f)(3). Lastly, there were no reasonable means to protect M.C. because Father was over 20,000 miles away and was unable to immediately take the child into his custody. [2] The jurisdictional findings naming Father as a failure to protect were also affirmed. Father left M.C. with Mother and knew of her "troubled history of substance abuse." He was also unable to tell the agency whether Mother was currently abusing methamphetamines. Mother was also unresponsive to Father's calls while he was working and the family friend that cared for M.C. reported Mother was using hard drugs and placing the child in danger. Thus, it was reasonable to conclude that Father would have been aware of Mother's substance abuse if he had been a more consistent parental presence in M.C.'s life. [3] The order removing M.C. from Father was reversed – there was insufficient evidence to establish detriment pursuant to section 361.2, subdivision (a). Father presented a credible though potentially challenging approach to the work-parenting balance through his plan to enlist the help of his Spanish-speaking aunt and uncle. Care plans to address remote working parents are almost always less ideal, and a language barrier between a child and his or her caregiver may present challenges. The law, however, does not take a child away from a parent based on less-than-ideal situations during a parent's working hours or because of language barriers. Inclusion of drug testing in Father's case plan was also reversed. There was no evidence to suggest Father suffered from substance abuse issues. (MO)