

Sacramento LAWYER

November/December
2018

SACRAMENTO
COUNTY BAR
ASSOCIATION
MAGAZINE



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A Primer on Juvenile Dependency Law

by Judge Shama H. Mesiwala



Judge Shama H. Mesiwala was appointed Commissioner and assigned to the dependency court in January 2017; Gov. Brown named her Superior Court Judge at the end of 2017.



Students, attorneys, and judges at a court-hosted ice cream social celebrating interns' summer service to the Children's Law Center: Judge Ken Mennemeier, Attorney Tina Milburn, Intern Sela Steiger, Intern Kelly Doyle, Intern Megan Humphries, Intern Corina Johnson, Intern Lacia Japp, Intern Supervisor Attorney Katherine McLoughlin, Attorney Peter Piper, Judge Shama Mesiwala, Attorney Katherine Taylor, Judge Paul Seave, and Judge Steve Basha

Introduction

When I was assigned to the juvenile dependency court, on my desk was a binder entitled, "The Insiders' Guide to Juvenile Court Dependency Proceedings." The first page had the following quotation: "While each division of the court is vitally important to the litigants and to society, there is no division of greater importance than the juvenile court, which deals with the sensitive parent-child relationship and the potential of horrendous damage to children." (*Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1243.) In my almost two years working in dependency court, I have reflected on this quotation often. What has struck me is the collaboration between the stakeholders – the court, the Department of Children, Family, and Adult Services (the Department), children's counsel, and parents' counsel – to ensure the concurrent goals child safety, family preservation, and permanency are met.

I write here to provide a window into the world of dependency cases – cases that are closed to the public but serve our entire community by, at their best, positively impacting generations of families in our region.

What Are Dependency Cases?

"Dependency proceedings are civil in nature, designed not to prosecute a parent, but to protect the child." (*In re Mary S.* (1986) 186 Cal.App.3d 414, 418-419.) The goals of these proceedings are threefold: (1) protect children; (2) preserve the family, if it can be done in a safe and timely manner; and (3) provide stable, permanent homes for children. (Seiser & Kumli, *Cal. Juvenile Courts Practice and Procedure* (2018 ed.) § 2.11, pp. 2-27 – 2-30.) A dependency court may take jurisdiction over a child in some instances "without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or

protect her child." (*In re R.T.* (2017) 3 Cal.5th 622, 624.)

How Do Children Come to the Department's Attention?

Children usually come to the Department's attention by a call to its hotline from people who suspect these children are in danger (e.g., neighbors, family friends) or from mandated reporters (e.g., teachers, medical professionals). The Department must first determine whether the call rises to suspected abuse or neglect. If it does, a child welfare social worker investigates the circumstances of the children and family. The Department must make reasonable efforts to keep children in the home when it is safe to do so. In the vast majority of cases, the social worker offers the family informal services to keep the family together while addressing the issues that brought the family to the attention of the Department. (See *Welf. &*

Inst. Code, § 301.) Parents who avail themselves of and benefit from these services will not see the inside of a dependency courtroom, as they have alleviated the risk to their children.

Traci F. Lee, Assistant County Counsel for the Department, who is responsible for overseeing the attorneys who represent the Department, describes her view of the social worker's job as follows: "The goal of the child welfare worker is to keep children safe and help families be healthy. They have one of the hardest jobs in that our community expects them to be 100 percent right 100 percent of the time – which is impossible. Amazing efforts and great successes are made every day by these workers and the families they help but cannot be shared due to confidentiality requirements. The work the Department does 24 hours a day, seven days a week with children and families in need of support provides immeasurable value to the health and well-being of our community as a whole."

How Do These Cases Get to Court?

If parents fail to avail themselves of or benefit from informal services or the Department does not offer them because it believes the risk is imminent, the social worker seeks juvenile court intervention. To initiate court proceedings, the Department must file a petition alleging the child is described by Welfare and Institutions Code section 300 and is in need of the juvenile court's protection. Some of the more common reasons are parents engaging in domestic violence in front of or near the children or using drugs that put their children at risk of serious physical harm. Mental health challenges for parents and/or children are other common reasons children are brought before the court.

Are Children Separated from Their Parents?

They can be. Parents can consent to removal of their children, the social worker can seek a court order (war-

rant), or if there is imminent risk of serious physical harm and no time to obtain a warrant, a peace officer may remove the children. (Welf. & Inst. Code, § 305.) The court may grant the request for a warrant if "it appears to the court that the circumstances of [the minors'] home environment may endanger the health, person, or welfare of the minor[s]." (Welf. & Inst. Code, § 340, subd. (a).) If children are involuntarily detained, they must be brought

before the court for a detention hearing as soon as possible and before the expiration of the next judicial day after the dependency petition has been filed. (Welf. & Inst. Code, § 315.)

At the detention hearing, the court must release children to their parents unless, among other things, "[t]here is a substantial danger to the physical health of the child[ren] or the child[ren are] suffering severe emotional damage, and there are no reasonable means by which the

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child[ren]’s physical or emotional health may be protected without” removal. (Welf. & Inst. Code, § 319, subd. (b)(1).)

Katherine McLoughlin, Certified Child Welfare Law Specialist and Staff Attorney for the Children’s Law Center, expresses her view of the separation of children from their parents as follows: “Every day, the juvenile dependency court makes decisions that have huge implications on a child’s life and future – the most drastic of which is the separation of a child from his or her family [A]s we have seen firsthand in our practice, this separation can be incredibly traumatic and can have long lasting detrimental impact on brain development, the ability to regulate emotions and the ability to cope with future stress. As a court system, it is critical that we work to keep families together unless separation is required for the protection of the children we serve.”

If children are detained, the court reviews the case in another three weeks to determine if there is dependency jurisdiction. (Welf. & Inst. Code, § 334.) If the court finds there is, the court may remove children from their parents only if it finds by clear and convincing evidence “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [children] if the [children] were returned home, and there are no reasonable means by which [their] physical health can be protected without removing [them] from [their] parent’s or guardian’s physical custody.” (Welf. & Inst. Code, § 361, subd. (c)(1).)

What Happens After Children Are Removed?

If the court removes children from only one parent, the court must decide whether it can place the children with the other parent with whom the children were not previously residing. (Welf. & Inst. Code, § 361.2, subd. (a).) If the other parent is requesting

custody, the court must place with that parent unless it would be detrimental to the well-being of the children. (Welf. & Inst. Code, §361.2). If the court cannot place with either parent, the Department must give “full consideration” to a foster placement in “proximity of the natural parents . . . so as to facilitate visitation and family reunification,” with preference for relatives unless not in the children’s best interests. (Fam. Code, § 7950, subd. (a)(1).)

In most cases where children have been removed from their parents, the court must provide family reunification services that are designed to help parents overcome the problems that led to dependency of their children. (Welf. & Inst. Code, § 361.5, subd. (a); *In re Christina L.* (1992) 3 Cal.App.4th 404, 414.)

The importance of these services is underscored by Mr. Dale Wilson, whose law firm represents both parents and children in juvenile dependency proceedings: “Once the court has removed the children, appropriate reunification services and most importantly quality visitation are vital to addressing the complex issues that families face in dependency proceedings. Counsel’s role for parents is largely about ensuring parents receive both the visitation and services that they will need to be able to safely parent their children.”

Timelines for Parents to Reunify Are Short

For children who are under the age of three at the time of the initial removal from their parents, parents have six months to reunify with their children. (Welf. & Inst. Code, § 361.5, subd. (a)(1)(B).) For children who are three or over at the time of initial removal, the parents have 12 months. (Welf. & Inst. Code, § 361.5, subd. (a)(1)(A).) And for a sibling group whose members were removed from their parents at the same time and in which one is under age three at the time of the initial removal, the parents have six months. (Welf. &

Inst. Code, § 361.5, subd. (a)(1)(C).) These timelines can be extended up to 18 months and in rare cases, 24 months, if, for example, there is a substantial probability that the children will be returned to their parents within that time. (Welf. & Inst. Code, §361.5, subds. (a)(3)(A)&(a)(4)(A).)

What Happens to Dependent Children If Their Parents Are Unable to Reunify?

If parents are unable to reunify, the court selects a permanent plan for their children. That plan includes adoption, guardianship, placement with a relative, or continuing foster care. Some examples of the latter are placement in the home of a non-related extended family member or licensed resource family. Courts used to wait until the parents had been unsuccessful in reunification before finding another permanent home for these children. (Seiser & Kumli, *supra*, § 2.11[3], pp. 2-28 – 2-29.) “But this form of ‘sequential planning’ often delayed permanency for children.” (*Ibid.*) The law now requires the court to engage in concurrent planning for all dependent children in out-of-home placement where parents are given reunification services. (*Id.* at § 2.12[9], p. 2-36.)

Concluding Thoughts

I close this article by returning to the collaboration necessary for ideal dependency proceedings. “The most effective litigants” (and I would add juvenile court judicial officers) “are usually those who work with the knowledge, insight, and spirit of cooperation to achieve realistic and reasonable goals,” “striv[ing] to protect the child and to maximize the involvement of the family in decision making and services.” (Seiser & Kumli, *supra*, § 2.10[3][practice tip], p. 2-27.) These proceedings are different than “the ordinary civil action” in the way they affect the fundamental rights of parents and children. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1661.) ✍