Children's Law Center of California

"DEPENDENCY LEGAL NEWS"

Vol. 21, No. 1: January 14, 2025
Issued by the Children's Law Center of California on the second Tuesday of each month.
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NEW DEPENDENCY CASE LAW

Bypass—WIC 361.5(b)(1)
In re Baby Girl R.—published 11/8/24; Second Dist., Div. Six
Docket No. H051362; 106 Cal.App.5th 706
Link to case: https://www4.courts.ca.gov/opinions/documents/H051362.PDF

WHEN THERE IS CLEAR AND CONVINCING EVIDENCE THAT A PARENT'S WHEREABOUTS ARE UNKNOWN AND PROOF THAT A REASONABLY DILIGENT SEARCH HAS FAILED TO LOCATE THE PARENT, THE JUVENILE COURT HAS THE DISCRETION TO BYPASS REUNIFICATION SERVICES BUT IS NOT REQUIRED TO DO SO.

Baby Girl R. tested positive for methamphetamine shortly after her birth at a homeless encampment. Though mother was transported with Baby Girl R. to the hospital shortly after the birth, after discharge she left Baby Girl R. at the hospital. Baby Girl R. was placed in protective custody. The agency interviewed several of mother's relatives in an attempt to locate her, including maternal grandfather, maternal stepmother, maternal aunt, maternal uncle, and a maternal cousin. The relatives reported that mother had a history of substance abuse and mental health issues. At disposition, the agency recommended reunification services to mother, while minor's counsel argued that there was clear and convincing evidence to bypass mother because her whereabouts were unknown despite a diligent search. Minor's counsel argued that if mother were located, she could claim that any case

plan ordered in her absence was not reasonably tailored to her needs, which would cause further delays to permanency for Baby Girl R. The agency argued that it had enough information about mother to tailor services to her needs and pointed out that, by statute, the court was required to set a six-month review hearing regardless of whether it ordered reunification services. After finding that mother's whereabouts were unknown despite reasonable efforts to locate her, the juvenile court ordered Baby Girl R. into placement and ordered reunification services for mother. Minor's counsel appealed the order granting reunification services to mother.

Affirmed. When a parent's whereabouts are unknown at disposition, the juvenile court has discretion to bypass reunification services to that parent but is not required to do so. WIC 361.5(b) identifies seventeen circumstances in which the court "need not" order reunification services upon clear and convincing evidence that the respective conditions are met. Section 361.5(b)(1) provides that reunification services "need not" be provided when, after a reasonably diligent search, the juvenile court finds by clear and convincing evidence that a parent's whereabouts are unknown. By providing that a court "need not" order reunification services, rather than that the court "shall not," the Legislature expressed clear intent to defer the issue to the juvenile court. Further, in contrast, sections 361.5(c)(1) and (c)(3) state that the court "shall not" order reunification for any parent defined under subdivisions (b)(3) through (17) in the absence of certain evidence. Because section 361.5 (b)(1) is not included in subdivisions (c)(2) and (c)(3), the Legislature did not intend to make bypass mandatory when a parent's whereabouts are unknown. Therefore, it is within the juvenile court's discretion to offer or bypass reunification services to a whereabouts unknown parent. In this case, there was evidence that mother's substance abuse and mental health issues contributed to Baby Girl R.'s removal. Therefore, the order for reunification services was supported by substantial evidence and was not arbitrary or capricious. (LL)

Minor's Right to Be Present—WIC 349

In re Juan A.—published 11/22/24; Second Dist., Div. One
Docket No. B337033; 106 Cal.App.5th 1204
Link to case: https://www.courts.ca.gov/opinions/documents/B337033.PDF

THE JUVENILE COURT ERRED WHEN IT DENIED MINOR'S COUNSEL'S REQUEST FOR A BRIEF CONTINUANCE FOR THE MINOR TO BE PRESENT; THE MINOR HAD A RIGHT TO BE PRESENT PURSUANT TO SECTION 349.

The juvenile court declared Juan a dependent in January 2020. Juan's mother failed to reunify with Juan and, in June 2023, the juvenile court found that he was not adoptable and he had no potential legal guardians. At a March 2024 permanency planning review hearing, Juan's counsel asked for a brief continuance for Juan to be present. The juvenile court denied the request, found that Juan's placement was appropriate, set a new hearing in six months, and ordered Juan to be present for that hearing. Juan's counsel filed a timely notice of appeal.

Reversed. The juvenile court abused its discretion when it denied Juan's counsel's request for a brief continuance for Juan to attend the hearing. A minor who is the subject of the hearing is entitled to be present and WIC 349(d) required the court to continue the hearing to allow Juan to be present. The juvenile court's denial prejudiced Juan - had he been present, it was probable that he would have requested additional services and addressed the court during the hearing. (DS)

ICWA—WIC 224.2, 366.4

In re T.R.—published 12/5/2024; Second Dist., Div. Seven
Docket No. B329240
Link to Case: https://www4.courts.ca.gov/opinions/documents/B329240.PDF

[1] ICWA ISSUES ARE PRESERVED ON APPEAL IF DEPENDENCY JURISDICTION IS TERMINATED WITH A LEGAL GUARDIANSHIP; [2] THE DUTY OF INITIAL INQUIRY REQUIRES THE AGENCY TO ASSESS ALL RELATIVES FOR POSSIBLE NATIVE AMERICAN HERITAGE.

A petition was sustained against the parents for domestic violence and mother's mental health. T.R. was subsequently declared a dependent and removed from his parents. When the parents were interviewed prior to the initial hearing, they denied Indian ancestry. At the initial hearing, father reiterated not having any Indian ancestry. Mother was absent at the initial hearing, but appeared during subsequent hearings. The juvenile court did not inquire as to possible Indian heritage as to mother and her family. In the jurisdiction report, the agency failed to conduct an ICWA inquiry as to the maternal and paternal family. After jurisdictional findings and dispositional orders, mother timely filed a notice of appeal. At the subsequent section 366.26 hearing, legal guardianship was selected as the permanent plan and dependency jurisdiction was terminated. Mother did not appeal the issuance of the legal guardianship. The agency moved to dismiss mother's appeal due to mootness.

Reversed. [1] As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. However, dismissal for mootness in such circumstances are not automatic, but must be decided on a case-by-case basis. Following establishment of a legal guardianship, the juvenile court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship. Thus, the juvenile court maintains jurisdiction over the minor even after a dependency termination order. As such, the juvenile court's duty of initial inquiry under ICWA was not extinguished once the legal guardianship was granted and dependency jurisdiction was terminated. In other words, mother's appeal was not moot because effective relief could be granted because the juvenile court maintained jurisdiction over the child as a ward of the legal guardianship. [2] The juvenile court failed to comply with its duties under ICWA. The agency's jurisdiction report confirms it contacted and interviewed a maternal aunt, a maternal great-aunt, maternal grandmother, mother's cousin, and paternal grandmother. However, none of the relatives interviewed by the agency were asked about possible Native American heritage. The agency's failure to inquire of possible Indian heritage violated their duty of initial inquiry. (MO).

APPEALS—MOOTNESS; EXPERTS—EVIDENCE CODE 730

In re P.S., et. al.—published 12/18/24; First Dist., Div. Two
Docket No. A169561
Link to case: https://www4.courts.ca.gov/opinions/documents/A169561.PDF

[1] AN APPEAL IS NOT MOOT IF THE ERROR AFFECTS SUBSEQUENT JUVENILE COURT PROCEEDINGS; [2] THE COURT SHALL CONSIDER A REQUEST FOR APPOINTMENT OF AN EXPERT PURSUANT TO EVIDENCE CODE 730 WHENEVER IT IS NECESSARY TO AID THE PARTY IN PRESENTING THEIR CASE. A PARTY MAY REQUEST AN EXPERT IN ANY PHASE OF THE CASE, INCLUDING DURING THE REUNIFICATION PERIOD.

The agency filed a petition regarding P.S. and the child's three other siblings due to domestic violence in the home. The children were originally released to the care of mother but were removed from her after continued contact and domestic violence between her and father. The court ordered family reunification services for mother and bypassed father. Mother began to participate in her case plan and by the time of the WIC 366.21(f) hearing, was in the process of completing both her domestic violence program as well as individual counseling. However, the agency expressed continued concerns about mother's compliance, including her possible contact with father. The

court continued mother's FR services at the section 366.21(f) hearing. Shortly after that hearing, mother filed a motion pursuant to section 730 of the Evidence Code, requesting the court appoint an expert to aid mother in preparing a defense for herself, specifically as to the bond and relationship between mother and her children. Mother argued the motion was timely made because caselaw supported making a 730 request before TFR as it would not delay permanency of the children. The juvenile court denied the 730 motion, finding it was not timely due to ripeness issues and it was not the court's duty to aid Mother in preparing her defense. Several months later at the section 366.22 hearing, the juvenile court terminated mother's reunification services and denied mother's renewed motion for a bonding study. Mother appealed.

Reversed. [1] Mother's appeals as to her two older children are not moot because their cases are still open and the issue of a bonding study is still relevant as to subsequent juvenile court proceedings, specifically as to the possible termination of her parental rights. However, as mother concedes, her appeals as to her two younger children are moot because the juvenile court granted legal guardianship over them and terminated jurisdiction over their cases. [2] The juvenile court erred in denying mother's motion for appointment of an expert pursuant to section 730 of the Evidence Code. The plain language of the statute is broad in its authorization of an expert to be appointed whenever the court or any party to the action requires expert evidence. This interpretation of the statute is also supported by section 731 of the Evidence Code, which makes a distinction between party-affiliated vs. neutral experts. Furthermore, in *In re Caden C.* (2021) 11 Cal.5th 614, the California Supreme Court specifically found bonding studies were appropriate in order to assist parents with their defense for termination of parental rights. Mother's motion for appointment of a section 730 expert is also ripe. The statute itself does not limit the time under which a party can request appointment of an expert. Nor do the policies and goals underpinning the dependency system support a restriction for when a bonding study expert is appropriate. As mother noted in her arguments to the juvenile court, requesting a bonding study during the reunification period promotes family preservation as delaying a request until after TFR delays permanency for the child. The juvenile court should exercise its discretion in considering whether an expert should be appointed for purposes of a bonding study without limitations as to a specific time period during the case. (SW)

NON-DEPENDENCY CASE LAW

Agency Duties—WIC 361.3

County of Los Angeles v. Superior Court—published 12/5/24; Second Dist., Div. Four
Docket No. B339093; 107 Cal.App.5th 160
Link to case: https://www.courts.ca.gov/opinions/documents/B339093.PDF

WIC 361.3 DOES NOT IMPOSE ON THE CHILD WELFARE AGENCY A MANDATORY DUTY TO NOTIFY A PLACEMENT-SEEKING RELATIVE OF A WIC 340 PROTECTIVE CUSTODY WARRANT REQUEST OR OF THE COURT ORDER GRANTING SUCH A REQUEST PRIOR TO ANY REMOVAL OF THE CHILD FROM THE PARENTS' PHYSICAL CUSTODY.

Starting from the time Noah was six-months-old in 2015 and going forward, there were at least a dozen calls made to the child abuse hotline and law enforcement from reporters who believed he was being abused. The agency would remove Noah from his parents' custody multiple times due to neglect and place him with his great-grandmother, Eva Hernandez ("grandmother") and in foster care. On November 9, 2018, Noah was returned to his parents over the agency's objection and his case continued under court supervision with family maintenance services. In 2019, the agency received several referrals for physical and sexual abuse of Noah. The agency filed an application under WIC 340 to remove him from his parents, which the court granted along with a separate order for a forensic medical or sexual abuse examination to take place within 72 hours. The agency failed to act on either order. Grandmother was never notified by the agency about the warrant removal request although she had been seeking placement. Seven weeks later, on July 6, 2019, four-year-old Noah died at the hands of his parents. After Noah's death, grandmother sued the agency, alleging several grounds of negligence including that, had the agency notified her of its request or the resultant removal order, she might have been able to prevent Noah's murder by notifying the court of the failure to execute the warrant removal. After grandmother's multiple amended complaints to which the county demurred, the trial court overruled the county's opposition, finding mandatory both the court's warrant removal and the agency's duty under WIC 361.3 to notify grandmother. The county petitioned for writ relief from the overruling of its demurrer. The Court of Appeal reviewed only the second cause of action in grandmother's seventh amended complaint for negligence as it raised a significant issue of law: whether the county has a duty to notify a relative of an application for a WIC 340 protective custody warrant or a court order granting such a warrant before removing the minor from physical custody of their parents.

Granted in part. The first sentence of WIC 361.3 provides, "*In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361*, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative[.]" Caselaw also confirms that 361.3 applies when a child is removed from their parents and placed outside the home or whenever a child must be moved from one placement to another. Here, as Noah was never ordered removed from his parents, 361.3 was never triggered. Although 361.3 does not specify when the social worker shall initially contact the relatives, read together with the statute's requirement of removal, it follows that contact should also occur after removal. While preremoval contact with relatives may be permissible, it is not required. Moreover, a WIC 340 warrant removal is not a mandatory removal order – by its terms, removal is authorized *unless* further investigation reveals there is no need to do so. Likewise, none of the other provisions invoked by grandmother including the state's Handbook section on 361.3 and manual of policies and procedures, the county agency's policy, Civil Code section 1714, and the special relationship doctrine, give rise to a mandatory duty to notify. (ML)