APPELLATE DEFENDERS, INC.

RECENT TRENDS IN DEPENDENCY CASE LAW

July 2013 through February 2014

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In re A.A. (2013) B240896 (2d Dist., Div. 1) (Los Angeles)
(Review Denied and Ordered Depublished 1/29/14)
On remand from Supreme Court, appellate court again holds that jurisdiction was taken in error. Father of two boys, ages 7 & 3, originally appealed from the juvenile court's finding the boys were at risk of being molested by father because he had molested an unrelated nine-year-old girl. Supreme Court granted review of appellate court's reversal but held it pending its decision in *In re I.J.* (2013) 56 Cal.4th 766, a case holding that a "father's prolonged and egregious sexual abuse of his own child may provide substantial evidence" all his children are at risk. A. A. court believed the difference between I.J. and A.A. was that the child in I.J. was a teenage daughter who had been forcibly raped by father and A.A. was not related and there was no penetration.

Los Angeles County Dept. of Children & Fam. Services v. Super. Ct. (2013) 222 Cal.App.4th 149 (2d Dist., Div. 5) [Los Angeles]
Where father was convicted of sexually assaulting young boys on 2 separate occasions, was civilly committed as a sexually violent predator (SVP) for almost 13 years after his 7-year prison term, & discontinued any sex offender treatment after his release in 2009, the respondent juvenile court erred in dismissing the dependency petition because substantial evidence did not overcome the presumption of jurisdiction set forth in section 355.1, subd. (d). Father violently sodomized a 10-year-old boy in 1986 & sodomized a 6-year-old boy in 1989. In both cases he admitted the assaults. He served a 7-year prison sentence & then was held in a state mental hospital as a sexually violent predator for almost 13 years. When released he began living with a woman with a 3-year-old daughter (no longer in her mother's custody). After mother was informed of father's status as a registered sex offender, she ended the relationship but then reunited with father, became pregnant, & had a son while living with father. Mother is slightly developmentally disabled & did not know the meaning of sodomy when she was informed of father's offenses. In jurisdiction hearing, the agency provided expert testimony from Dr. Barry Hirsch, a psychologist. Dr. Hirsch was unable to interview the parents because they refused but based his report on father's criminal history, agency reports, & father's mental health evaluations. He concluded father presented a serious & well-founded risk of sexually grooming his son & father would wait until the court was no longer focused on him before he began to groom & sexually molest his son. After the dismissal, the agency sought a writ of mandate to reverse respondent court's order. The respondent court & real parties in interest filed no return to the appellate court's alternative writ. After reviewing the evidence provided by the agency & the lack of evidence from father challenging the prima facie showing in section 355.1, subd. (d), the

Court of Appeal held that in light of the record as a whole the facts were insufficient to overcome the presumption that the child was at substantial risk of abuse or neglect.

In re A.G. (2013) 220 Cal.App.4th 675 (2d Dist., Div. 1) [Los Angeles]
The juvenile court's jurisdiction & disposition orders were reversed & the case remanded to family court when the dependency petition alleged only mother was mentally ill & unable to care for the children but where father has always been, and is, capable of properly caring for them. Mother began to show signs of mental illness 7 years ago & her symptoms were initially controlled by medication. Mother recently stopped taking her medication resulting in her hearing auditory hallucinations & causing her to behave erratically. She was hospitalized twice to control her behavior. The trial court found jurisdiction based on section 300, subd. (b), based on mother's mental illness. The appellate court found this was error when father has shown remarkable dedication to the children including having a nanny always available when he works & even temporarily moving out of the house with the children to protect them from mother. Father's ability to protect the minors & provide an appropriate home was not questioned. Based on these facts, the appellate court held this case should have been in family court all along & remanded the case to that court for a hearing on custody & visitation. [D. Kaiser]

Maggie S. v. Superior Court (2013) 220 Cal.App.4th 662 (2d Dist., Div. 1) [Los Angeles]
Where mother designated the maternal uncle & the child's godmother in writing as possible caretakers while incarcerated, & the godmother was initially willing to care for the infant, the juvenile court did not have any basis to take jurisdiction. Mother filed an appeal after her parental rights were terminated & challenged the jurisdiction & disposition orders. The Court of Appeal treated mother's appeal as a writ petition. Mother was never advised orally of the writ requirement & the appellate court held this excused mother's lack of compliance. Since the agency failed to inform the court that mother had designated a caregiver in writing & that the caregiver was willing to take the child, the trial court was unaware mother had arranged for childcare. Based on these facts, mother was able to arrange for her child's care. The agency's concerns re: the suitability of the caretaker were found insufficient to supply jurisdiction & the order sustaining the jurisdictional allegations was reversed.

In re T.V. **(2013)** 217 Cal.App.4th 126 (4th Dist., Div 1) [San Diego]
Trial court properly sustained the petition based on a single incident of domestic violence & removed the child from her father even though she was not present during the fracas. The Court of Appeal found that the petition was not limited to a single incident of domestic violence. Instead, the court held that based on the long history of

such behavior, the pattern of continued domestic violence despite treatment, & the father's decisions about continued contact with mother, who was an active drug user, was substantial evidence sufficient to support jurisdiction.

DISPOSITION

Removal

In re Felicity S. (2013) 163 Cal.Rptr.3d 846 (1st Dist., Div. 2) [Contra Costa]
In an appeal by mother from the jurisdiction & disposition orders, where appellate counsel was appointed to represent respondent-minor, it was improper for the appellate counsel to reverse the position taken by minor's trial counsel without authorization by the minors' guardian ad litem and/or without an explanation as to how the reversal of position is in the child's best interest. Child was detained for uncontrolled diabetes and/or diabetic ketoacidosis. In the unpublished section of the opinion, the appellate court affirmed the jurisdiction & disposition orders& removing the child from her mother. The appellate court granted the request of the First District Appellate Project (FDAP) to appoint counsel for the minor on appeal. Appellate counsel was given an extension to confer with her client & then filed a 75-pp. brief which mirrored the issues raised in mother's briefing. At trial, minor's counsel joined with the agency & opposed return of the child to her mother's custody. The Court of Appeal asked minor's appellate counsel to file a declaration to address 4 separate concerns from the court re: her briefing. Appellate counsel filed a 25-pp. declaration which did not directly address the court's concerns. As a result, the appellate counsel was admonished for improperly taking a position contrary to minor's position in the trial court without direction from the guardian ad litem. [N. Gold for mother]

Reunification Services

In re G.L. (2014) 222 Cal.App.4th 1153 (4th Dist., Div. 1) [San Diego]
Despite finding a bypass provision applied to deny mother reunification services, the juvenile court did not abuse its discretion is finding reunification services were in the child's best interest where mother was actively involved in services in prison, immediately entered drug treatment upon her release, & was visiting regularly. Mother had previously lost 4 other children to dependency & failed to reunify because of her long substance abuse history. The child was detained after mother left the child with a relative & did not return. The trial court found section 361.5, subds. (b) (10) & (11) did not apply, but held subd. (b)(13) was proved. However, the court ordered reunification served based on evidence it would be in the best interest of the child. The child appealed. The appellate court held that even though the record supported an opposite finding, the trial court did not abuse its discretion in ordering reunification citing all mother's efforts to reunify with her 2-year-old child. [J. Braden for child; A. Tobin]

In re S.B. (2013) 222 Cal.App.4th 612 (4th Dist., Div. 2) [San Bernardino]
Father failed to show the bypass provisions for registered sex offenders did not apply to him & that clear & convincing evidence showed reunification was in the child's best interest & the Court of Appeal affirmed. Twelve-year-old child was removed from mother for substance abuse & mental health issues. Father had custody of S.B. until his arrest in 2010 for lewd acts with another child of 14 or 15 years old. The juvenile court denied father reunification services pursuant to section 361.5, subd. (b)(16), based on his status as a registered sex offender. Despite extensive argument on appeal, the appellate court concluded father was required to register as a sex offender even if California had failed to enact all the provisions required by federal statutes. [Extensive discussion here re: federal & state interaction for federal grant monies.] Since the bypass provision applied, father can still be granted reunification services if he can show reunification is in the child's best interest. The Court of Appeal found father made no showing of best interest because father has an substantial criminal record, an extensive drug abuse history, & lacked insight into the factors contributing to his drug use, criminal activity, or sexual abuse. [J. Moran]

In re A.M. (2013) 217 Cal.App.4th 1067 (1st Dist., Div 1) [Lake]
Where trial court failed to make the necessary finding required by the bypass provisions for reunification services, the court erred in granting mother's 388 petition. The children were detained when the 11-month-old was found to have multiple fractures likely caused during one or more incidents & neither parent could explain the injuries. The trial court bypassed reunification services based on section 361.5, subds. (b)(5) & (b)(6). Three months later, mother filed a 388 petition & the trial court granted her request for reunification services. The appellate court held that in order to grant services per subd. (b)(5), reunification can only be granted if those services are likely to prevent reabuse. For subd. (b)(6), the trial court must make an express finding of best interest for the child. The trial court failed to make these findings & mother's 388 petition did not preclude the need for these express findings. The grant of reunification to mother was reversed & the case remanded with directions to enter an order setting a section 366.26 hearing. [L.Barry]

Placement Orders

In re Suhey G. (2013) 221 Cal.App.4th 732 (2d Dist., Div. 3) [Los Angeles]
Father's filed a writ petition challenging the referral of his 5-year-old daughter's case to a section 366.26 hearing. Appellate court reversed, concluding the juvenile court erred by setting a 366.26 hearing & denying father a fair opportunity to present his case for relief under section 361.2. Suhey came into custody due to being physically abused by her mother & mother's substance abuse. Father was considered whereabouts unknown. Agency served father with notice of the detention hearing at his last known

address of "Idaho, California," even though it knew father's address was in the state of Idaho. This error continued throughout the proceedings. When father contacted the agency shortly before the six month review, it was only because maternal relatives told him about the proceedings.

Court also ruled that no error occurred by the juvenile court ordering an ICPC evaluation of this out-of-state father's home because the court had discretion to use such an evaluation to gather information to determine if placing Suhey with father would be detrimental to her.

In re Abram L. (2013) 219 Cal.App.4th 452 (2d Dist., Div 3) [Los Angeles]
Trial court erred when it failed to make the express finding required by section 361.2 when it denied father's request for immediate placement as a non-custodial, non-offending parent. Children are 15 & 13 years old & were removed from mother after she made threats to stab them with pieces of a broken mirror & a knife. All the family members believed mother had underlying mental health problems. At the disposition hearing, held 2 months after the children were detained, father requested custody & the trial court refused to move the children from their foster home finding placement with father was "premature." The trial court made no reference to the findings required in section 361.2 & the appellate court declined to make implied findings. In addition, the court held father had not forfeited his argument. Holding the trial court's failure to consider section 361.2 resulted in a miscarriage of justice, the Court of Appeal reversed & remanded the case. [D. Rooney]

In re Patrick S., III (2013) 218 Cal.App.4th 1254 (4th Dist., Div. 1) [San Diego]
Where child has a competent, caring & stable parent available, the trial court erred in finding emotional detriment in placing with that parent even if teenaged child was anxious & resigned to placement. The child's wishes to remain in foster care, the anxiety about moving to his father's home, the need for continued therapeutic services, the lack of an established relationship with father & step-mother, & father's scheduled military deployments were not substantial evidence of detriment. Trial court was concerned that 13-year-old would object to placement & might run away. These fears were not sufficient to find placement with father was detrimental. Further, compliance with an ICPC is not required to place child with an out-of-state parent. Detriment finding was reversed & remanded but the remainder of the dispositional findings were affirmed. [J. Tavano; J. Braden for child.]

In re Nickolas T. (2013) 217 Cal.App.4th 1492 (4th Dist., Div. 1) [San Diego]
The trial court erred in ordering long-term foster care at the disposition hearing & failing to consider placement with non-custodial mother but these errors were harmless. Child had been living with his aunt for a number of years in California under a

guardianship from Mississippi. In May 2012, Nickolas alleged on-going physical abuse by his guardians & claimed he was afraid to return home. The trial court treated the case as a continuation of the Mississippi case at the California disposition hearing. California had not been previously involved in the case &, when Mississippi declined jurisdiction, the juvenile court was required to follow California law for a disposition hearing. The court declined to apply the precedent set by *In re A.A*. (2012) 203 Cal.App.4th 597 that held that for a parent to be considered for placement the parent must be non-custodial & non-offending. The Court of Appeal held the parent need not be a non-offending parent to be considered for placement. However, even if the court had considered placement with mother in Mississippi, the trial court had substantial evidence to support the finding that placement with her would be detrimental. In addition, the decision to place Nickolas in long-term foster care did not result in a miscarriage of justice even though it was in error. [W. Caldwell]

In re H.K. (2013) 217 Cal.App.4th 1422 (2d Dist., Div. 3) [Los Angeles]
Where a child has not formed a parental relationship with an relative, the California statute prohibiting placement of a child with a relative with an out-of-state conviction for voluntary manslaughter passes constitutional muster & does not violate the child's due process rights. Ten-year-old child requested to be placed with an adult half-sibling in Arizona but the trial court denied the request finding it lacked discretion to do so based on state law section 361.4. Child appealed. Court held that right to be placed with a relative is not a fundamental constitutional right. As such, the statute prohibiting placement with a relative who has a conviction for a violent felony need only be rationally related to the statute's purpose which is to protect children in foster care. The state's compelling interest in protecting children in foster care justifies the prohibition against placement of dependent children with individuals who have been convicted of voluntary manslaughter.

In re E.D. (2013) 217 Cal.App.4th 960 (3d Dist.) [El Dorado]
Juvenile court erred when it failed to return 10-year-old child to his father at the 12-month review hearing when father had completed his reunification services, had visited extensively, & the child wanted to live with his father permanently. Child removed from his mother for substances abuse along with his 2 half-siblings & was placed with maternal grandmother where he remained. After completing reunification services including conjoint therapy with the child & grandmother, & having an approved ICPC from Nevada, the trial court held it was detrimental to return to father because removing him from his placement & siblings would jeopardize his emotional well-being. Appellate court reversed finding an absence of substantial evidence of detriment even though minor's attorney, the CASA, & grandmother all opposed return to father. The

Court of Appeal held their views must be tethered to supporting evidence & none was offered.

In re E.T. (2013) 217 Cal.App.4th 426 (2d Dist., Div. 8) [Los Angeles]
The appellate court reversed the order placing E.T. with his biological father who never achieved presumed father status & remanded the visitation order which failed to adequately specify the frequency & duration of mother's visits. Almost 2-year-old child lived with his mother, an older sibling, & maternal grandmother, who is the legal guardian of the sibling. Mother admitted to leaving the child with maternal relatives for days at a time & she has a history of drug abuse & mental illness. The petition was sustained because during mother's absence, E.T. suffered from a fever & vomiting& mother did not provide the maternal grandmother with medical authorization to obtain treatment. Father had a child welfare history including physical & emotional abuse, excessive & inappropriate physical discipline with his stepchildren, & a prison term of 3 years for domestic violence from 2003. At disposition, the court placed E.T. with father under family maintenance but E.T. was subsequently removed for neglect. On appeal, the father argued that although he did not qualify as a presumed father the court properly exercised its discretion in placing E.T. with him. The appellate court determined the appeal was not moot as argued by father after E.T. was removed because the custody order had collateral consequences which would continue to adversely affect mother in this & future proceedings. The appellant court held the facts showed father did not qualify as a presumed father & he was not entitled to custody pursuant section 361.3, the relative preference statute. The Court of Appeal held it was a clear abuse of discretion to place E.T. with father rather than maternal grandmother since father had no relationship with E.T. & grandmother had no criminal or child welfare history. Further, the court's visitation order was remanded because it failed to given any indication about the frequency or duration of mother's visits. [L. Serobian]

In re John M. (2013) 217 Cal.App.4th 410 (2d Dist., Div 1) [Los Angeles]
A history of domestic violence between the parents is sufficient for jurisdiction even when the petition alleges only a single instance & father is neither a non-custodial nor a non-offending parent entitled to placement pursuant to section 361.2. John was removed due to mother's bi-polar disorder & daily heroin use. Mother left him with a paternal aunt & disappeared. John, who's age is not provided although he is old enough to verify the parents' domestic violence, was eventually placed with an adult paternal cousin. At the time John was detained, father was in jail for domestic violence. Father argued that since the incident alleged in the petition did not occur in front of John & had occurred over a year before that it was insufficient for jurisdiction. The appellate court found that the parents' history of domestic violence evidenced an on-going pattern that presented a very real risk to John's physical & emotional health sufficient for jurisdiction.

As for placement, the court initially held father forfeited his claim of error for not considering placement with a non-custodial parent by failing to raise the issue at trial. The court went on to conclude that father is neither a non-offending nor a non-custodial parent as required by section 361.2 with a thorough discussion of statute & *In re A.A*. (2012) 203 Cal.App.4th 597. The Court of Appeal held father is not a parent with whom the child was not residing [non-custodial] when the dependency began because mother & father shared custody of John & the petition was sustained on allegations against father [non-offending] based on his quarrels & domestic violence history with mother. In addition, since father's criminal offense was the cause of his non-custodial status, he did not fit the purpose of the statute to keep children with their parents if possible. [J. McGowan]

Restraining Order

In re C.Q. (2013) 219 Cal.App.4th 355 (2d Dist., Div 1) [Los Angeles]

Appellate court affirmed the restraining order protecting mother but reversed order as to 3 minor children where no evidence showed father was a danger to his children. Parents separated but living together when father grabbed boxes of glass figurines & threw them on the ground in front of mother & their 12-year-old daughter. Father then struck mother in the arm with a closed fist but then left. The family's 3 other daughters (1 is an adult) did not witness the incident. When interviewed by the social worker, the child who was present denied anything happened. According to mother, this was the 2d incident in which father had struck her but the children convinced her not to report the 1st incident so father would not have to move out of the family home. It appears the daughters would not say anything "bad" about their father because he gave them money & bought them whatever they wanted. Based on mother's report of 2 prior domestic violence incident's & a physical altercation with the adult son of mother, the juvenile court issued a restraining order protecting mother & ordered father to stay away from the 3 minor daughters except during monitored visits. Father did not challenge the order protecting the mother but appealed the inclusion of the children. The Court of Appeal held the juvenile court erred in listing the children as protected persons as there is no evidence indicating the children's safety might be in jeopardy.

PRELIMINARY/CONTINUING CONSIDERATIONS

Guardian Ad Litem (GAL)

In re M.P. (2013) 217 Cal.App.4th 441 (6th Dist.) [Santa Clara]

The Court of Appeal held the trial court soundly exercised its discretion in appointing a GAL for mother & then concluding a separate *Marsden* inquiry was no longer necessary. Eleven-year-old M.P. was detained from her mother after the two engaged in a physical altercation in which both were bruised & M.P. was placed on a 5150 hold due to her delusional thoughts & prior suicidal ideation. The petition alleged

mother suffered from paranoid schizophrenia & she refused treatment. The child's psychiatrist diagnosed M.P. as suffering from psychosis & folie á deux (shared psychotic disorder) in which her mental status was being negatively affected by her mother's condition & irrational beliefs. Primary among mother's beliefs was that they (mother & daughter) were being repeatedly raped by someone who was breaking into their home on a nightly basis. In response to a request by mother's attorney prior to the jurisdiction hearing, the court held a closed hearing re: appointment of a guardian ad litem (GAL) for mother & subsequently appointed a GAL. The court did not hold a separate *Marsden* hearing as requested by mother. (*People V. Marsden* (1970) 2 Cal.3d 118.) From the opinion, it appears the trial court took some time to question mother to determine her mental status. Mother argued her statements about people breaking into her home did not indicate she did not understand the nature of the proceedings. The appellate court disagreed holding that regardless of the language difficulties, mother's unsupported statements about people repeatedly entering her home or car & doing injury to her & her daughter indicated "she was still suffering from a mental disorder involving delusions & paranoid beliefs." Consequently, substantial evidence showed mother was incompetent for purposes of appointing a GAL.

As for the absence of a *Marsden* hearing, the trial court was correct in concluding mother's complaints about her attorney were related to her attorney's belief mother needed a GAL, she had a mental disability, the failure to meet mother more than once, & the failure to request make-up visits. The number of times one sees her attorney & the way in which one relates with her attorney does not sufficiently establish incompetence & the appointment of a GAL would address mother's complaints.

Paternity

V.S. v. M.L. (2013) 222 Cal.App.4th 730 (1st Dist. Div. 3) [Marin]

Appellate court found a possible biological father has standing to bring an action to establish the existence of the father-child relationship even if mother's current husband is unquestionably the presumed father. The facts are undisputed that Victor is likely the child's biological father, prior to the infant's birth mother married Roger, Roger is named as the father on the child's birth certificate, Roger has received the child into his home, & Victor has never met the child because mother has thwarted his attempts to do so. Opinion reviewed history & case law for Family Code section 7630. The appellate court concluded the 2010 amendment confers on Victor standing to assert his claim. Since Victor has standing, he must now establish his biological paternity & prove he qualifies as a *Kelsey S.* or quasi-presumed father. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816) If he is successful, the juvenile court will have to decide which presumed father can be the only recognized presumed father based on the facts "founded on the weightier considerations of policy & logic" focusing on the goal of paternity statutes which is the protection of the child's well being.

Indian Child Welfare Act (ICWA)

Adoptive Couple v. Baby Girl (2013) ____ U.S. ____, [133 S.Ct. 2552, 186 L.Ed.2d 729] ALITO, J. delivered the opinion of the Court, in which ROBERTS, C.J., & KENNEDY, THOMAS, & BREYER, J.J., joined. THOMAS, J. and BREYER, J., filed concurring opinions. SCALIA, J. filed a dissenting opinion. SOTOMAYOR, J. filed a dissenting opinion, in which GINSBURG & KAGAN, JJ., joined and in which SCALIA, J., joined in part.

U.S. Supreme Court reversed & remanded the Supreme Court of South Carolina's orders denying the adoptive couple's adoption petition & awarding custody to the biological father, a member of the Cherokee tribe. The Supreme Court found that even though father was a "parent" under the Indian Child Welfare Act (ICWA) neither section 1912(f) nor (d) prevented termination of his parental rights. Relying on the phrase "continued custody" the court held section 1912(f) did not apply to a parent who had never had custody of the child. Further, the Court found the requirement to provide active efforts to prevent the breakup of an Indian family found in section 1912(d) did not apply because father did not have custody of his daughter previously. Finally, the court held the adoption-placement preference in section 1915(a) is inapplicable when only the adoptive couple sought formal adoption & not the father, paternal grandparents or any other Indian family. Dissent by Sotomayor provides the most credible reading of the statute & Scalia makes an important point as well.

In re Autumn K. (2013) 221 Cal.App.4th 674 (1st Dist., Div. 2) [Del Norte]

Termination of parental rights reversed in proceeding involving placement of an Indian newborn. Two placements were potentially viable ICWA placements: maternal grandmother and maternal aunt. Grandmother had custody of Autumn's six siblings and sought custody of Autumn from beginning of case. Instead of placing her with either of these women, agency placed her in a non-Indian home with a distant relative. Agency claimed it did so because Autumn could not be placed with grandmother due to grandfather having a criminal conviction (contributing to the delinquency of a minor) that agency wrongfully believed was non-exemptible. Appellate court reversed and ordered agency to do a meaningful evaluation of the exemption requirement. Court also found tribal custody forms mother and grandmother executed at Autumn's birth did not grant grandmother custody. Finally court did not improperly apply existing Indian family doctrine.

Guardianship of D.W. (2013) 221 Cal.App.4th 242 (1st Dist., Div. 4) [Sonoma]

Six year old child's paternal grandmother appeals the appointment of the maternal aunt as child's guardian. Indian tribe (Karuk) also intervenes at this point in support of grandmother's petition. Grandmother contended court failed to comply with the ICWA inquiry and notice requirements. Appellate court reverses and remands for further

proceedings, holding that in a guardianship proceeding it is petitioner's burden to provide proper notice to the tribes if represented by counsel. If no counsel, then court clerk must provide notice. Grandmother, from the beginning of the proceedings, told the court her son was enrolled in the Jurok or Karuk tribes. Court also erred in making grandmother give notice since as the person objecting to the guardianship, she was not required to give ICWA notice. (Rule 7.1015(d)(5), (6).)

In re D.N. (2013) 218 Cal.App.4th 1246 (2d Dist., Div. 4) [Los Angeles]
After the Choctaw Nation made clear that further inquiries would not change its determination that the children were not eligible for tribal membership, the trial court's decision to not send additional, late-obtained information was harmless error. The tribe was contacted 4 times beginning in July 2010, each time with new information including, finally, an enrollment number for a maternal aunt. The tribe's response was that the ICWA does not apply & the tribe "sees no reason to continue any future inquiries." Mother argued the failure to transmit the information was prejudicial because the tribe did not have a meaningful opportunity to search the tribal registry. Finding membership criteria is the tribe's prerogative & its determination is conclusive, the appellate court found no error in the juvenile court's decision to defer to the Choctaw Nation's conclusion that further inquiries would be futile. Interesting short history about whether tribes recognize their former slaves as members.

In re S.E. (2013) 217 Cal.App.4th 610 (2d Dist., Div. 4) [Los Angeles]
Where the agency failed to name the direct ancestor for mother on the ICWA form & failed to provide any notice for father, the agency failed to comply with the inquiry & notice provisions of the ICWA. The child was removed for severe neglect including a failure to thrive/oral aversion, delayed speech, anemia, eczema, undescended testes, severe tooth decay & asthma. Mother repeatedly failed to adequately care for the child even after signing a voluntary family maintenance contract. The child was placed with the maternal grandparents but the parents abducted S.E. from a monitored visit & he was not located for 2 years. During that time his physical problems were not addressed as evidenced S.E. gaining only 5 lbs in 2 years. Mother claimed Cherokee heritage through the mother's great grandfather. Father claimed Indian heritage through Sioux & Choctaw tribes. The Court of Appeal found it could not find the failure to include the name of mother's great grandfather was harmless error since he was the direct ancestor through which mother & maternal grandmother claimed Indian heritage. As for the failure to send any notice for father, the agency conceded the error. The appellate court reversed the order establishing a guardianship with the maternal grandparents & remanded the case with directions to comply with the ICWA. [K. Dodd for mother]

In re G.C., Jr. (2013) 216 Cal.App.4th 1391(3d Dist.) [Butte]
Where father did not object to the order terminating parental rights based on a failure to follow tribal custody adoption procedures & the issue was raised for the first time on appeal it is forfeited &, in this case, any error was harmless. The child was removed in a dependency proceeding in August 2004 as an infant & placed in a foster home with Cynthia N. where he remains. The parents failed to reunify after 12 months of services and Cynthia N. was declared the child's legal guardian in February 2006. Mother is tribally affiliated with the Tyme Maidu Tribe, Berry Creek Rancheria & Cynthia N. is a "designated Indian home." In April 2011, the agency moved for a section 366.26 hearing to terminate parental rights because Cynthia was planning to move out of state & wanted to adopt the child. In 2011, mother had last visited more than 2 years before & father had had no contact in 4 years. An Indian child welfare expert testified at trial, the Tribe supported a plan of adoption, & mother voluntarily relinquished her parental rights. Father did not mention the need to consider tribal customary adoption. The appellate court applied the forfeiture rule & refused to consider the issue for the first time on appeal. In finding this error was harmless the court held that adoption by Cynthia, rather than maintenance of the parental relationship with the non-Indian parent [father], best preserved the child's tribal relationship & furthered the policy underlying tribal custody adoption.

6-MONTH REVIEW HEARING

In re Mary N.B. (2013) 218 Cal.App.4th 1474 (4th Dist., Div. 1) [San Diego]
When new evidence was presented by the agency after the 6-month review hearing was continued for other reasons, the appellate court found father was not entitled to a directed verdict, the continuance was proper, the agency's request to reopen evidence was proper, & evidence supported the finding that return to father would create a substantial risk. Mary, now 5, was detained after a domestic violence incident between the parents where she was present. The 6-month review hearing was continued to allow minor's counsel to visit & interview her client. The delay in contact appeared to be caused by the child's caretaker. Finding a section 350 motion for directed verdict could not be granted until the agency & the minor have presented their evidence, the appellate court held the trial did not err in denying father's motion. The 11-day continuance to allow minor's counsel to fulfill her statutory duty to meet with Mary was not an abuse of discretion. The agency's request to reopen the case for further evidence was based on new information from the caregiver & mother regarding father's escalating anger & aggression towards mother. Since the new particulars were provided in an addendum report prior to the continued hearing, the Court of Appeal found the delay was not protracted &, since the overriding issue is ensuring the child's well-being, it could not find the juvenile court's decision to reopen the case constituted "a palpable abuse of

discretion." As for the detriment finding, father's own therapist reported he minimizes, does not think he has an anger problem, & has no clue how his anger affects others. The appellate court found the evidence supported the trial court's finding that father exhibited positive change but it was too soon to say whether he had actually changed. [N. Gold; S. Evans for minors]

VISITATION AFTER REUNIFICATION

In re D.B. (2013) 217 Cal.App.4th 1080 (1st Dist., Div. 4) [San Francisco]
Where the children's behaviors continued to be quite severe before & after visits with their parents, the trial court did not abuse its discretion by terminating visits after reunification services had ended. Despite the parents' arguments to the contrary, the burden of proof for a section 388 petition is a preponderance of the evidence. The court granted the parents visitation after reunification services were ended in July 2010. At that time, the children had been living with the relative placement for only 2 months. At the time of the section 388 hearing, held more than a year & a half later, the children were doing well in their continued placement. The trial court heard abundant new evidence of the boys' continued negative responses to visits with both mother & father including acting out, loss of bowel control & aggressiveness at home & in school. The court held that whether these responses to visits were similar to or worse than the behavior exhibited before July 2010, they constituted new evidence that visits were harming the boys & amply justified the court's decision.

STATUTORY WRIT

In re A.H. (2013) 218 Cal.App.4th 337 (6th Dist.) [Santa Clara]
Court of Appeal found the record failed to demonstrate the parents' failure to comply with the writ requirements should be excused for exceptional circumstances constituting good cause & further that no briefing was provided on the orders appealed from resulting in the dismissal of the appeal. Prior to the 18-month review hearing, the parents requested & the juvenile court granted their requests to represent themselves. The parents had also been informed of their need to provide in writing any new mailing address. The parents filed a notice of appeal challenging the denial of their motion to vacate the judgement from an earlier hearing & their motion to modify the children's placement. On appeal, the briefing challenged the order setting a section 366.26 hearing arguing their compliance with the writ requirement was excused. The appellate court found that because the parents stormed out of the 18-month review hearing they did not receive the oral advisement of the writ requirement. In addition, they failed to timely file written notification of their change of permanent mailing address.

Given these facts, the Court of Appeal declined to review contentions concerning the 18-month review hearing in this appeal from later rulings & dismissed the appeal.

MISCELLANEOUS

Report to Child Abuse Central Index (CACI)

Veronica Gonzalez v. Santa Clara County Dept. of Social Services (2014) 223 Cal.App.4th 74 (6th Dist.) [Santa Clara]

Agency ordered to hold a new hearing on whether mother's spanking of her 12-year-old daughter with a wooden spoon was child abuse sufficient to submit to the Child Abuse Central Index (CACI) after the appellate court found several errors in the administrative hearing. After an investigation, the agency concluded that the report of child abuse was substantiated & submitted it to the state Dept. of Justice for inclusion in CACI. Mother challenged her listing on the CACI by requesting a grievance hearing. The hearing officer found the referral was substantiated & agreed it should be reported to CACI. Mother next filed a petition for writ of administrative mandamus but the agency's decision was affirmed. Mother appealed. Through all the hearings, mother asserted a parental privilege to use reasonable discipline including spanking. The appellate court found that this privilege, under these facts, showed mother's conduct was not reportable child abuse. The court held the trial court refused to consider whether mother's conduct was reasonable parental discipline & this was error. Opinion contains thorough review of what constitutes child abuse. Also, the appellate court found the hearing officer erred in excluding the child's testimony even after being told the child was "eager to talk" to him. Further, the daughter's testimony was material because it was the only way to resolve several factual conflicts in the evidence which were relevant. Finally, the opinion indicated the hearing officer had a misapprehension about his discretion & duties. The petition for administrative mandamus was reversed & the agency was ordered to conduct a new hearing or issue a decision that the prior finding was unfounded. [S. Gorman]

Probate Guardianship

In re J.D. (2013) 219 Cal.App.4th 1379 (1st Dist., Div. 4) [San Francisco]

After a dependency proceeding has begun the juvenile court holds exclusive jurisdiction over the case & has authority to terminate a predependency probate guardianship & change the children's placement pursuant to a section 388 petition. Paternal grandmother was appointed guardian in probate court in 2004. Two of the siblings filed a 388 petition to end the guardianship & to change their placement from grandmother's to the aunt & uncle's home. The motion was denied & the children appealed & the trial court's orders were affirmed. The children then filed a 388 petition to change their placement & a 728 petition to end the guardianship. These motions were granted & grandmother appealed. The appellate court held a juvenile court with

dependency jurisdiction has authority to terminate a predependency probate guardianship based on a motion filed by minor's attorney. The Court of Appeal rejected grandmother's arguments that a detriment finding was required to change the children's placement or that she was entitled to reunification services. Grandmother also filed a writ in response to the setting of a section 366.26 hearing but the appellate court denied the petition because all of grandmother's arguments relied on her contention her guardianship was terminated in error. [L. Barry for respondent children]

Non-minor dependent

In re J.C. (2014) 222 Cal.App.4th 1489 (4th Dist., Div. 3) [Orange]

Mother's appeal from the termination of jurisdiction based on her child's request after she turned 18 years old was dismissed for lack of standing. The Court of Appeal found that mother's legal interest in the companionship was eliminated entirely, at least for purposes of the dependency proceeding, when the child turned 18 years old. Child detained in 2010 because father was neglecting schooling & proper psychiatric care resulting in the child's psychiatric hospitalizations. The parents were offered reunification services but these were eventually ended. After she turned 18, J.C. asked the court to end jurisdiction so she could return to living with her father. The court asked J.C. to consider the decision for a week & afterwards granted her request. The appeal by mother was dismissed.

In re Shannon M. (2013) 221 Cal.App.4th 282 (1st Dist., Div. 5) [Alameda]

Non-minor dependent appeals termination of jurisdiction over her. Shannon spent years in foster care but was returned to her mother's home only to be abandoned by her shortly after she turned 18. Reversed & remanded so that juvenile court could reconsider termination under section 391 and not section 364(c). Under section 391, jurisdiction can be terminated if it is in the non-minor dependent's best interest. In this case, the court found it was NOT necessarily in Shannon's best interest to terminate jurisdiction & remanded for further proceedings so her best interest could be further evaluated under the proper statute.

Case gives comprehensive history of various statutes dealing with termination of jurisdiction. In 2000, section 391 was enacted to give prerequisites to terminating dependency jurisdiction at or after 18. Agencies were to provide social security card and other documents and help dependents get health insurance, housing and admission to colleges/training programs. In 2012, the California Fostering Connections to Success Act became operative so California could take advantage of federal funding for extended foster care benefits for non-minor dependents in foster care placement when they turned 18. (42 U.S.C. §675(8).)

In re A.F. (2013) 219 Cal.App.4th 51 (1st Dist., Div. 5) [Alameda]
Although the appellate court reversed the juvenile court's order for continued Aid to Families with Dependent Children-Foster Car (AFDC-FC) benefits to a nonminor former dependent, the case was remanded with instructions to appoint a successor guardian which would allow the new guardian to pursue continued benefits for the former dependent adult. Contains helpful overview of relatively new statute designed to assist foster children. A.F. turned 18 on December 31, 2011 & signed a mutual agreement for extended foster care with her guardian & the agency. Subsequently, the guardian died in a fire in May 2012. The agency terminated A.F.'s benefits because she no longer had a guardian. In response to A.F.'s Request to Return to Juvenile Court Jurisdiction & Foster Care, the juvenile court found A.F. continued to be eligible for benefits, ordered the agency to designate a substitute caregiver or allow A.F. to be her own payee. The agency appealed on a variety of grounds. Finding no question that the court could have appointed a successor guardian if A.F.'s guardian had died when A.F. was still a minor, & that ending benefits based on the death of a guardian was contrary to the legislative purpose to support former foster youth, the appellate court held the juvenile court's jurisdiction did not automatically terminate with the death of the guardian. As written the trial court's order cannot stand but the case was remanded so the juvenile court can, upon a request & sufficient showing by A.F. to modify the prior order of guardianship, appoint a successor guardian. [V. Lankford for respondent A.F.]

In re Nadia G. (2013) 216 Cal.App.4th 1110 (2d Dist., Div. 3) [Los Angeles]
The Court of Appeal reversed & remanded when the trial court terminated jurisdiction over a non-minor dependent before the agency filed a section 391 report which was required to terminate jurisdiction. Section 391 authorizes the juvenile court to terminate its jurisdiction over a non-minor dependent in foster care who is between the ages of 18 and 21, but only in 3 narrowly defined circumstances & only after the agency has submitted a report containing recommendations & verifying it has provided the non-minor with certain information, documents, & services. Nadia became a dependent at 17 years old when her mother was unwilling & unable to provide parental care & supervision & her father had long ago left the family. Nadia qualified for special education, had a history of truancy, had no high school credits, had an infant, & she was pregnant with her 2d child. Nadia had difficulty remaining in any placement & she ran away from 3 placements including foster care, group homes, & an NREFM; went missing for several months more than once; was arrested a couple of times; & she became pregnant with her 3d child. Mother was living with the paternal grandparents of her unborn child & began working with her social worker. The agency recommended continued jurisdiction. The juvenile court terminated jurisdiction finding Nadia had not participated in services. The appellate court found evidence supported the trial court's finding Nadia was not participating in a reasonable & appropriate transitional independent living case plan

(TILP) but termination of jurisdiction was premature. The agency is required to submit a 391 report about whether it is in the non-minor's best interests to remain under the court's jurisdiction including whether the checklist of information, documents, & services that must be provided was given to the non-minor. Since the agency has not met the section 391 requirements, the juvenile court is forbidden to terminate its jurisdiction. [P. Dikes]

Disentitlement Doctrine & Petition for Rehearing by a Referee

In re L.J. (2013) 216 Cal.App.4th 1125 (3d Dist.) [Sacramento]

In an opinion certified for partial publication, the Court of Appeal refused to apply the disentitlement doctrine as urged by the agency because the parents absconded & concealed the minor for over a year. In addition, the referee's original order terminating parental rights was valid but the orders granting a rehearing & again terminating parental rights were void &, consequently, the appeal from these orders was dismissed. The facts are extensive but are largely irrelevant to the published sections of the opinion. A petition was filed in October 2010 because the child was riding in mother's car when mother physically abused an older half sibling & 3 siblings were already adjudicated dependent children due to domestic violence & drug abuse. Mother refused to name the relative the child was staying with in the Bay Area & L.J. was not located until April 2012. The parents were denied reunification services & parental rights were terminated in August 2012. As for the disentitlement doctrine, the court concluded that even though the parents absconded with the child "the balance of all equitable concerns [citation] does not justify applying the disentitlement doctrine here." As for the petition for rehearing, the appellate court held the first order terminating parental rights was not set aside in the manner required by law & thus became final & conclusive. The referee made the initial order terminating parental rights followed within the statutory deadline by father's motion for rehearing. The referee purported to hear & grant father's motion but only a judge of the juvenile court may hear the rehearing motion. Consequently, the referee's actions, done without subject matter jurisdiction, were void. [J. Dodd]