APPELLATE DEFENDERS, INC.

RECENT TRENDS IN DEPENDENCY CASE LAW

December 2010 through July 2011

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Petition & Findings

In re D.C. (2011) 195 Cal.App.4th 1010 (6th Dist.) [Santa Clara County]
Appeal by mother argued that jurisdiction under Welfare and Institutions Code[1], section 300, subdivision (i) [cruelty], required proof of mother's intent to harm the child. **The Court of Appeal disagreed and found intent was not required and that it was enough that the parent intended to perform the act of cruelty**. Mother held her 7-year-old daughter underwater in a public fountain long enough that a bystander intervened to save the child. The child, D.C., has cerebral palsy and suffers from right-sided weakness and cognitive deficits. Mother suffers from mental illness and substance abuse. Mother knew D.C. was "terrified" of water, but she put D.C. over the fence surrounding the fountain, then climbed over the fence and held D.C. under the water more than once. D.C. was screaming and crying and a witness said it appeared mother was trying to drown the child. In its interpretation of the statute, the court found no mention of the parent's state of mind. The appellate court held that the whether the action by the parent was an "act of cruelty" was a factual question that does not require a finding that the parent specifically intended to cause harm. The jurisdiction finding was affirmed.

In re Anthony G. (2011) 194 Cal.App.4th 1060 (2d Dist., Div. 1) [Los Angeles County]
Two-year-old Anthony is detained after father and grandmother are involved in a physical altercation in front of the children. Father did not live with mother and denied paternity. Mother submitted to jurisdiction under section 300, subdivision (b). The petition alleged father failed to provide support to Anthony under subdivision (g). After father was found to be the biological father, the court sustained the (g) allegation against father and he appealed. **Father argued, and the appellate court agreed, the agency failed to present substantial evidence to support the subdivision (g) allegation because no evidence showed the child had been left without any provisions for support**. Although father failed to provide any support for Anthony, the child was cared for by his mother and grandmother. Failure to contribute to the support does not justify jurisdiction because section 300 is invoked to protect abused and neglected children and not to determine

[1]All references to statutory authority are to the Welfare and Institutions Code unless otherwise specified.

which parent must provide child support. Long dissent [P.J. Mallano] found that because mother submitted to jurisdiction under subdivision (b) that Anthony did not receive adequate care.

In re B.T. (2011) 193 Cal.App.4th 685 (4th Dist., Div. 3) [Orange County]
The child at issue was conceived during an unlawful sexual relationship between mother, an adult, and father, a minor. Mother was arrested for this relationship when B.T. was not yet five months old. **The Court of Appeal reversed finding, after careful examination of the record, no substantial evidence to support the juvenile court's jurisdiction over B.T. at the time the findings and orders were made under section 300, subdivisions (b) or (d)**. The appellate court found no evidence mother was likely to abuse or neglect B.T. On the contrary, she had an exemplary track record of child-rearing. "While her relationship with father certainly reflected poorly upon her judgment in one area, nothing suggested that it would cause her to neglect or abuse her baby daughter, especially since there was no evidence at all of any past abuse of her three other children (aged 17, 12, and 9), or of any other children." As for mother's lapse in judgment, for these lapses to endanger B.T., there had at a minimum to be some evidence that Debra either habitually had them in the past and so was very likely to have them in the future or was likely to have them in the future for some other reason. There was no such evidence. As for possible alcohol abuse, the evidence showed mother regularly drank beer, and various people opined that she drank more beer than they believed she should have but no one opined that she neglected or endangered B.T.-or her other children for that matter-as a result. As for the possible sexual abuse of B.T, the agency's position assumes an adult woman who has had a consensual sexual relationship with an unrelated 15-year-old boy will probably sexually abuse her infant daughter. "This is, of course, a complete non sequitur, so it is not surprising that the record contains no evidence to support this assumption."

In re Daisy H. (2011) 192 Cal.App.4th 713 (2d Dist., Div. 1) [Los Angeles County]
Old evidence of prior domestic violence, without more, is insufficient for jurisdiction under section 300, subdivisions (a) or (b). Two weeks after the parents signed a mediated "custody and parenting" plan in their dissolution proceeding, an unidentified person reported to the agency that father was emotionally abusing the children (9 & 13 years old). Based on reports that father choked mother, pulled her hair, called her names, and threatened to kill her, along with father's alleged "mental and emotional problems," the juvenile court sustained the petition against father per section 300, subdivisions (a) and (b), but found the same evidence insufficient to support a subdivision (c) allegation. Although the trial court terminated its jurisdiction during the pendency of the appeal, the appellate court found father's appeal was not moot. The Court of Appeal noted the conduct described in the petition occurred at least 2 years before, but probably happened

7 years before. This fact, along with reports by the children that they had never witnessed father physically abusing mother and they had no fear of father, provided insufficient evidence to support a finding that past or present domestic violence placed the children at a current risk of harm under either subdivisions (a) or (b). As for father's mental and emotional problems, no evidence linked mother's allegations to physical harm or risk of harm to the children. The court reversed the jurisdiction and dispositional orders.

In re Andrew L. (2011) 192 Cal.App.4th 683 (4th Dist., Div. 1) [San Diego County]
The appellate court found the trial court properly amended the petition dismissing the subdivision (a) allegation and modifying the subdivision (b) allegation as a result of a motion pursuant to section 390 filed by the agency. Father contended the court prejudicially erred because section 390 permits only dismissal of an entire petition, but not dismissal of part of a petition after a true finding. The Court of Appeal rejected father's argument that the entire petition should be dismissed and the agency was required to file a new petition or a supplemental petition under section 342. The appellate court found father's argument speculative that removal of one serious allegation would mean the petitions would not have been filed. Because the agency's written section 390 motion provided all parties with explicit notice of the issues being litigated, and the court conducted a full hearing affording each party the opportunity to be heard, there was no violation of due process. Moreover, dismissal of a petition under section 390 is allowed only when the court finds the interests of justice and the welfare of the child require dismissal and the parent is not in need of treatment or rehabilitation. In the instant case, the court found no showing that dismissal of the petition would support the interests of justice and the child's welfare.

In re V.M. (2010) 191 Cal.App.4th 245 (2d Dist., Div. 8) [Los Angeles County]
Without evidence that father did or failed to do anything to or for his child, the court lacked a basis for jurisdiction and "abdication of a parental role" is not a statutory basis for dependency jurisdiction. Seven-year-old child lived with maternal grandparents for her entire life including after her mother's death. Father had regular contact with his daughter and provided child support to the grandparents. After father purchased a larger home, he wanted his daughter to live with him and he asked for additional visitation with the intention that his daughter would eventually live with him. The grandparents refused and filed a report of child abuse with the agency based on allegations that father drank alcohol to excess. After an extensive investigation, the trial court dismissed all the alcohol-related allegations but found jurisdiction because father had "abdicated his role of father for his daughter all her life." The appellate court found the juvenile court abused its discretion by asserting jurisdiction where no evidence indicated parental abuse or neglect. The trial court's finding and facts did not establish the child suffered or was at risk to suffer serious physical harm or illness as a result of any act

or omission by father. The trial court was ordered to dismiss the petition unless new circumstances would justify a new finding of jurisdiction.

In re Grace C. (2010) 190 Cal.App.4th 1470 (1st Dist., Div. 4) [Alameda County] Children removed from mother for general neglect because of a lack of stable housing and domestic violence. Grace had been previously placed with her maternal great-grandmother in a previous dependency. The parties agreed in September 2008 to a settlement making the maternal great-grandmother and great-aunt legal guardians of Grace (now 6 years old) and Angelo (now 5 years old). Mother's appeal challenged the court's order terminating jurisdiction because of concerns about visitation and mother argued the visitation agreement improperly delegated authority to the minor's therapist. **Section 366.3, subdivision (a), requires termination of jurisdiction if a relative is the legal guardian and the child is placed with the relative for more than 12 months except on a finding of exceptional circumstances. The Court of Appeal held that concerns about visitation were not exceptional circumstances because visits were occurring and jurisdiction could not be maintained on that basis**. As for improper delegation regarding visitation, the court found the visitation order was very specific but it allowed the guardians to reduce visits on recommendation of the minors' therapist. The court found the therapist had no authority to change visits but could only make recommends and the discretion to reduce visits was properly left with the guardians. Mother could petition the juvenile court for relief if visits were reduced without a good reason.

In re X.S. (2010) 190 Cal.App.4th 1154 (2d Dist., Div. 1) [Los Angeles County] **A delay in undertaking parental responsibilities until after the results of a paternity test is not enough to find the child was at risk of harm sufficient for dependency jurisdiction**. Child was detained after mother and maternal grandmother had an altercation. Mother is a minor and, after father was identified, he requested a DNA test. Until the results of the test, father did not visit the child. After the DNA test showed he is the biological father, he visited, offered to take a parenting class, and requested his child be placed with him at his parents' home. The Court of Appeal held father's delay until the test results did not cause the child to suffer any physical harm since the child was safely placed with his maternal grandmother. After the DNA test, he accepted responsibility and quickly committed to providing for his son. Father's conduct after leaning he is the biological father does not demonstrate any future risk of harm or endangerment to the child and, consequently, cannot sustain the section 300, subdivision (b), findings against him. Judgement reversed as to father and remanded.

DISPOSITION

Bypass Provisions

In re Allison J. (2010) 190 Cal.App.4th 1106 (1st Dist., Div. 5) [San Francisco County]
The Court of Appeal found bypass provision section 361.5, subdivision (b)(12) satisfies the requirements of substantive due process because father does not have a constitutionally-protected liberty interest in being provided with reunification services. Section 361.5, subdivision (b)(12), allows a court to bypass reunification services where a parent has committed a "violent felony" within the meaning of Penal Code section 667.5, subdivision (c). Father was denied reunification services based on his status as a registered sex offender with convictions for robbery and misdemeanor cruelty to animals. On appeal, he contended subdivision (b)(12) is "unconstitutional because it does not require a nexus between the criminal conduct and the ability to parent" and violated his substantive due process rights. The appellate court disagreed and found "given the weighty interests of the state in assuring the proper care and safety of children in the dependency system, and those of the children themselves, [§ 361.5 subd. (b)(12)] sufficiently diminishes the risk of erroneous deprivations of services as to satisfy the requirements of due process.

Delegation of Visitation

In re Brittany C. (2011) 191 Cal.App.4th 1343 (2d Dist., Div. 4) [Los Angeles County]
Where the children expressed continued objections to visits with their parents and the juvenile court repeatedly attempted to engage the family in therapy, it was not error to order monitored visits only in a therapeutic setting. Father and Mother have seven children: Chris (born 1994), twins William and Kyle (born 1999), and quadruplets Brittany, Heidi, Collette, and Wesley (born 2001). In January 2009, DCFS filed a petition, alleging sexual abuse by Father and physical abuse by Mother. The petition was amended and the court found that the severe family conflict placed the children at risk of serious physical and emotional harm. The juvenile court ordered that visits were to be monitored and held in a therapeutic setting. Mother argued on appeal that at the time of the order, the quadruplets had not begun individual therapy and 2 of the quadruplets were no longer participating in conjoint therapy. As a result, mother contended, the effect of the court's order is to deny her visitation. In addition, mother urges that the court abdicated its duty to order visitation by allowing the children to decide whether visits would take place. The appellate court found "the parents' interest in the care, custody and companionship of their children is not to be maintained at the child's expense; the child's input and refusal and the possible adverse consequences if a visit is forced against the child's will are factors to be considered in administering visitation." The children expressed on many occasions that they fear father and mother and did not want to visit their parents. Nonetheless, the court endeavored to find a way to facilitate visits. The children's wishes were not the sole factor in the court's decision to suspend visitation. It was the therapist

who halted the family's counseling sessions and the court was unwilling to continue visits in a non-therapeutic setting. There was nothing improper in the court taking a step back to consider the recommendations of a therapist and the desires of the children before attempting to fashion a visitation plan.

Kevin R. v. Super. Court (2010) 191 Cal.App.4th 676 (4th Dist., Div. 1) [San Diego County]
Father filed a writ petition challenging the court's termination of his reunification services and setting a section 366.26 hearing. Father is a registered sex offender whose parole conditions prohibit him from any contact with children, including his daughter. A.R., now 2 years old, was detained from her mother because mother had a history of mental illness, homelessness, substance abuse, and prostitution. Father modified his parole conditions to allow supervised, weekly visits with A.R. and he visited consistently. **The appellate court held that visitation in a dependency proceeding is subject to the limitations imposed by father's parole conditions. As a result, the juvenile court acted within its authority to order visits to occur with the concurrence of father's parole officer**. The Court of Appeal also affirmed the trial court's finding there was no substantial probability A.R. would be returned to her father by the 12-month review hearing – only 2 months away. Substantial evidence showed that, even without the unsworn statement of the parole officer that father's parole conditions would not be further modified, father could not demonstrate a substantial period of supervised visits, adequate parenting, or positive reports from sexual offender therapy in order to progress to unsupervised visits, and certainly not placement.

Visitation With A Non-Custodial Parent

In re T.H. (2010) 190 Cal.App.4th 1119 (1st Dist., Div. 5) [Alameda County]
Parents were separated, father threatened mother and the children and he was arrested. The court eventually terminated jurisdiction, granted joint legal custody, with physical custody to mother, and supervised visitation for father "to be determined by the parents." **Father argued and the Court of Appeal agreed that a visit order which relied on parental cooperation alone to ensure visits was an improper delegation of authority.** The power to determine the right and extent of visitation by a noncustodial parent resides with the court and may not be delegated to nonjudicial officials or private parties. Father's ability to seek a modification or enforcement of the order in the family court does not solve the problem of this unauthorized delegation. The difficulties created by this arrangement are not merely technical. It is clear from the record that father and mother do not get along and that any agreement regarding visitation will be difficult to achieve. The

juvenile court determined father was entitled to supervised visitation and it abused its discretion by framing its order in a way that gave mother an effective veto power over that right.

PRELIMINARY/CONTINUING CONSIDERATIONS

Indian Child Welfare Act (ICWA)

In re Z.W. (2011) 194 Cal.App.4th 54 (3d Dist.) [Sacramento County]
The appellate court found that mother forfeited her claim of failure to comply with the ICWA when all the forthcoming information was included in 4 separate notices, mother offered corrections, reviewed the notices at the penultimate hearing and failed to make the objections raised on appeal. The opinion has an extensive analysis of *In re X.V*. (2005) 132 Cal.App.4th 794 and related cases but finds "[a] line has to be drawn" on the finality of notice per the ICWA. In addition, the Court of Appeal held the notice was sent to the correct agents for process since they were mailed and received 2 months before the new list of agents was published and, although some of the agents changed, the addresses did not.

In re D.W. (2011) 193 Cal.App.4th 413 (3d Dist.) [Nevada County]
The spelling of a relative's name was not central to the ICWA notice when father could not state with certainty the correct spelling and no error occurred when the great grandparents were not identified as tribal members. Father appealed notice per the ICWA based on misspellings of his paternal grandmother's first and middle name. Father claimed possible Cherokee heritage and the agency sent notice to the Bureau of Indian Affairs (BIA) and several tribes. Father highlighted 3 spellings of the paternal grandmother's name found in the record. The appellate court found that father did not show affirmatively that the spelling used on the notices was erroneous because any of the spellings could have been correct. Further, even with the omission of the paternal grandmother's middle name, none of the tribes indicated that either of the great-grandparents was a member or eligible to be a member so the paternal grandmother was not eligible regardless of how her name was spelled.

In re Jack C., III (2011) 192 Cal.App.4th 967 (4th Dist., Div. 1) [San Diego County]
The Court of Appeal found the trial court erred in denying father's petition to transfer the case to tribal court of the Bois Forte Band of Minnesota Chippewa (Band) because the children were Indian children within the federal and state definitions of "Indian child" and the trial court should have deferred to the Band's determination of the Indian status of the children, which was conclusive. Father found he was an eligible member of the tribe during the dependency and the tribe determined the children were eligible for membership. The tribe intervened and a month after the tribe was contacted and confirmed the children were eligible members, father

petitioned to transfer jurisdiction of the dependency case to the Band. The trial court denied the motion finding the children were not Indian children and the petition was not timely filed. The appellate court granted the agency's motion to augment and take judicial notice that the Band enrolled the children. The Court of Appeal held California's Indian child custody frameworks sets forth greater protections for Indian children, their tribes, and parents than the ICWA. The reviewing court held, in the absence of good cause to the contrary, the trial court is required to transfer the proceeding to the jurisdiction of the tribe. The burden of establishing good cause to deny the request to transfer is on the party opposing the transfer. The ICWA establishes concurrent but presumptively tribal jurisdiction which requires transfer. The appellate court established the petition was timely since it was filed one month after the tribe received notice per section 224.2. Finally, the court held the error is jurisdictional and the court acted in excess of its jurisdiction when it terminated parental rights "violating a comprehensive state and federal statutory scheme and offending public policy."

Paternity

In re M.C. (2011) 195 Cal.App.4th 197 (2d Dist., Div. 1) [Los Angeles County]
Where 3 people qualify as parents for a dependent child, the trial court must find only 2 parents. The trial court found the biological mother (Melissa) a presumed parent along with her married female spouse (Irene). Melissa and Irene were still married but separated when Irene was attacked and seriously injured by Melissa's new boyfriend and the dependency began after Melissa was arrested as an accessory to attempted murder. Melissa became pregnant with Jesus when she was separated from her wife, Irene. Jesus cared for Melissa for the 1st four months of her pregnancy, but Melissa then returned to Irene and did not provide Jesus with any contact information. The child, M.C., was born and lived with his 2 mothers for 3 to 4 weeks before Melissa left again. Irene filed for joint legal and physical custody. Jesus had moved to Oklahoma for work but provided support when Melissa contacted him. Jesus moved out of state before M.C. was born. Only Irene has visited M.C. during the case and, although Jesus has visited his child when he is in California, he is not able to receive the child into his home. The California Supreme Court has held that a child may only have 2 parents. The Court of Appeal followed stare decisis but invited further consideration of whether such a limitation is in the child's best interest.

In re D.R. (2011) 193 Cal.App.4th 1494 (2d Dist., Div. 3) [Los Angeles County]
The appellate court found that father's voluntary declaration of paternity was not validly executed or filed and the trial court did not err in denying father's 388 petition requesting presumed father status. Father denied paternity until after a DNA test determined he was the biological father. After reunification services were terminated, father began to visit once a week. Father attached the signed voluntary declaration of

paternity to his section 388 petition filed just prior to the section 366.26 hearing to show changed circumstances. The Court of Appeal held the declaration was not properly witnessed by mother's trial attorney and was not filed within 20 days with the Department of Child Support Services as required by statute. Since the declaration was not valid, the trial court properly denied the petition based on no change of circumstances. The appellate court found that even if the voluntary declaration substantially complied with the statute, the juvenile court properly concluded father did not qualify as a presumed father based on his delay in taking action to act as a parent.

SECTION 366.26 ISSUES

Termination of Parental Rights

In re Frank R. (2011) 192 Cal.App.4th 532 (2d Dist., Div. 3) [Los Angeles County]
Father appealed from the order of the juvenile court terminating his parental rights to nine-year-old twins Frank and Teena contending the court denied him due process by terminating his rights without a finding he was unfit and the Court of Appeal agreed. The children were residing with their mother at a sober living facility in when mother was arrested and charged with child cruelty for abusing Teena. The agency filed a petition against mother alleging abuse and neglect of the twins under subdivisions (a), (b), and (j). The juvenile court sustained the petition as to mother and declared the children dependents. As to father, already found presumed, the court found the failure-to-provide allegations to be untrue and dismissed them as to father. Accordingly, father was a nonoffending parent. Father never requested custody of the children and remained living in a hotel for the duration of the case. He visited and contacted the children infrequently and inconsistently. The juvenile court failed to meet the *Santosky* requirements and overlooked the safeguards established by the California dependency scheme because the court never made a finding father was unfit, having never made a finding of detriment by clear and convincing evidence with respect to father. (*Santosky v. Kramer* (1982) 455 U.S. 745, 758 [102 S.Ct. 1388, 71 L.Ed.2d 599].) At no time during the dependency did the court ever make the requisite detriment finding by clear and convincing evidence as to father. Although there may be valid bases for the juvenile court to make a finding of father's unfitness, the court never made that finding and due process prohibited the termination of father's parental rights.

In re B.C. (2011) 192 Cal.App.4th 129 (2d Dist., Div. 3) [Los Angeles County]
The Court of Appeal found that when a voluntary relinquishment becomes final before the section 366.26 hearing, the relinquishment precludes the court from proceeding with the hearing. However, it is not within a child's best interests to continue an already much-delayed section 366.26 hearing in order to enable a parent to complete a last-minute end-run around an anticipated termination of parental rights. On the eve of a hearing to terminate parental rights at a section 366.26 hearing and to determine whether the child's foster parents should be designated prospective adoptive parents, the child's mother filed a relinquishment of her parental rights, designating the child's maternal aunt as the person with whom she intended the child to be placed for adoption (Fam.Code § 8700, subd. (f)). Despite having been granted numerous opportunities to visit with the child, the aunt had failed to form a bond with the child, who was attached to the foster parents. The aunt, mother, and the agency sought immediate placement of the child with the aunt, a position which brought them in conflict with the foster parents and the minor. At the hearing, the dependency court apparently believed that its hands were tied by the mother's designated relinquishment. Upon receipt of the official acknowledgment of mother's relinquishment (not the completed relinquishment), the court granted an oral motion for a continuance, immediately terminated the hearing, and lifted its previous order which had prevented the agency from removing the child from the foster parents' home without court approval. The appellate court reversed these orders and remanded finding the court abused its discretion in granting a continuance and in terminating the hearing without a valid relinquishment.

Beneficial-Relationship Exception

In re C.F., et al. (2011) 193 Cal.App.4th 549 (4th Dist., Div. 1) [San Diego County]
The Court of Appeal affirmed termination after mother argued the beneficial-relationship exception finding the instant case was unlike the case law relied on by mother. Children removed in 2007 for domestic violence and drug abuse by mother. Mother received 18 months of reunification services and the children were returned to her. She relapsed and the children were removed again and placed with relatives who preferred adoption. The appellate court affirmed the trial court's finding that mother did not visit regularly even though she had three, 2-hour supervised visits weekly at the end of the case. As for the benefit to continuing mother's relationship, the court focused on the children's behavior and lack of response to mother's visits. The children did not appear distressed at the end of visits, and even though the daughter cried a few times when she separated from her mother, the court said she was not distressed at the end of most visits. The court relied on the lack of a bonding study or other evidence that mother occupied a parental role or that the children would suffer any actual detriment on the termination of parental rights. The court decried the reliance on *In re S.B*. (2008) 164 Cal.App.4th 289. The court painstakingly distinguished the facts of the instant case with

In re S.B. Finally, the court warned that "[c]ounsel should not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error."

Sibling Exception

In re J.T. (2011) 195 Cal.App.4th 707 (3d Dist.) [Sacramento County]

Where adult sister argued minor would be harmed by termination of parental right because it would interfere with the sibling relationship, sibling has no standing and appeal was dismissed. Mother diagnosed with paranoid schizophrenia and psychosis and J.T. had attention deficit hyperactivity disorder, extreme mood swings, and aggressiveness. J.T. (now 12 years old) and his sister (over 18 years) were returned to mother twice but ultimately were removed the last time in September 2009. The siblings continued to visit despite separate placements. Prior to the section 366.26 hearing, the sister filed a 388 petition requesting standing at the permanency hearing to present evidence of the sibling exception. The sibling's petition was granted but she failed to appear. On appeal, the sibling joined with mother's the sibling exception argument. The court found the sister did not have standing because she was not entitled to challenge the termination of parental rights nor does she have a right to block the minor's adoption. Further, the sister, as an adult, is fully capable of having a relationship with her brother regardless of whether mother's parental rights remained intact.

MISCELLANEOUS

Post-permanency Hearing

In re J.F. (May 11, 2011, D058522) ____ Cal.App.4th _____ [2011 WL 184821] [San Diego County]

At a post-permanency hearing pursuant to section 366.3, statutory and due process considerations give the parent of a child in long-term foster care the right to participate without conditioning that on an offer of proof and the error was not harmless because additional evidence was likely to assist mother. Fifteen-year-old J.F. is in long-term foster care. At the original section 366.26 hearing, J.F. said he would miss his mother and not seeing her "would be the worst thing ever." By the time of the 12-month post-permanency review report, J.F. did not want to visit his mother. Mother said the agency's report was in accurate about her visits and her efforts to visit J.F. Finding the agency could not recommend a more permanent plan for J.F. at the time of the hearing, the court held that reunification with his mother might be the best alternative for J.F. The error by denying mother a chance to present evidence was not harmless because there is a reasonable probability of a result more favorable to mother. The order denying a contested hearing was reversed and remanded.

De Facto Parents

In re B.F. (2010) 190 Cal.App.4th 811 (4th Dist., Div. 1) [San Diego County]

De facto parents not entitled to review confidential psychological evaluation of mother ordered by the court in dependency proceedings because the appellate court held de facto parents are not entitled to review a parent's psychological report nor did the de factor parents have any legitimate interest in seeing the evaluation. Children, aged 21 and 2 months when detained, were removed because of drug use and domestic violence between the parents. The de facto parent, an attorney, filed motion per section 827 demanding access to mother's psychological evaluation in order to better care for the children. Trial court granted de facto parents' motion and mother appealed and filed writ of supersedeas to prevent release. Court of Appeal granted writ to prevent release of the evaluation pending resolution of the appeal and reversed the trial court's order preventing access to mother's psychological evaluation.

When Parent Dies During Appeal

In re A.Z. (2010) 190 Cal.App.4th 1177 (4th Dist., Div. 3) [Orange County]

The juvenile court terminated father's parental rights to child and father appealed, but then died. Father's counsel moved to dismiss the appeal as moot. **The Court of Appeal held that dismissal was proper disposition when appeal was rendered moot by father's death**. After father's death, father's attorney filed a motion to dismiss the appeal and in response the appellate court appointed counsel to represent A.Z. and invited all parties to file supplemental briefs addressing the proper resolution of this appeal in light of A.Z.'s best interests. The court decided to publish this opinion because the parties did not cite, and the court did not find, any published opinion addressing the proper disposition of a dependency appeal when an appellant parent dies while the appeal is pending. In criminal cases, appellate courts have issued orders of permanent abatement, rather than dismissal, after a defendant has died. Permanent abatement of a case on appeal can result in the case having no final resolution, which is untenable for a dependent child who is awaiting such final resolution to clear the path for adoption. Even acknowledging the risk A.Z. might not receive survivor benefits, consideration of A.Z.'s best interests compels the conclusion that finality of this dependency case and adoption outweigh any risk she might not receive such benefits.

Minor's Attorney & Possible Conflict of Interest

In re T.C. (2010) 191 Cal.App.4th 1387 (3d Dist.) [Sacramento County]

The minor's attorney did not have a conflict of interest in representing both children even though the children had different permanent plans because there was no actual conflict and, even if 2 attorneys were appointed, the juvenile court's decision would have been the same. The minor, T.C., then two months old, and her half sister, R.B., then 11 years old, were detained due to mother's ongoing drug use and untreated mental health

problems. The children were placed together and had an obviously close relationship with each other. At the section 366.26 hearing, minors' counsel argued for termination of parental rights as to the youngest child, noting her adoptability and no exceptions to adoption applied. Counsel also specifically argued the sibling relationship exception did not apply because the siblings were placed together and the caretaker was committed to them despite the different permanent plans. Through counsel, the older sibling informed the court that although she loved her mother and wanted to have a relationship with her, she really wanted guardianship "right now because she feels like this is the place where she can be stable." The court terminated parental rights as to the younger sibling and ordered a plan of legal guardianship as to the older sibling. Mother argued because the permanent plans for the children were different, an actual conflict arose for minor's counsel and the trial court prejudicially erred in not appointing separate counsel. Mother did not argue on appeal that minor's counsel provided ineffective assistance of counsel because T.C. was not adoptable; she did not argue the sibling relationship exception applied; nor did she argue there would be substantial interference in the sibling relationship. Consequently, the appellate court found no conflict and no error.

Family Code Termination

T.P. v. T.W. (2011) 191 Cal.App.4th 1428 (1st Dist., Div. 5) [Contra Costa County]
Mother argued, and the appellate court agreed, she is an "interested person" within the meaning of Family Code section 7841, subdivision (b), because she "has a direct interest in the action..." and reversed the order denying mother's petition. In response to a paternity action initiated by father, mother filed a petition under Family Code section 7802 to free her child from the custody and control of father, the admitted biological father. The trial court ruled mother had no standing to commence such a proceeding and the court then entered a judgment establishing father's parentage and denying mother's petition to terminate parental rights. The Court of Appeal concluded that both the language of the statute and the available case law establish that Mother has standing and reversed the judgment and remanded.