

APPELLATE DEFENDERS, INC.



RECENT TRENDS IN DEPENDENCY CASE LAW

August 2011 through December 2011

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JURISDICTION

Petition & Findings

In re I.A. (Dec. 19, 2011, A131432) ___ Cal.App.4th ___ [2011 WL 6317370] [Alameda County]

When father only challenges the jurisdictional findings involving his conduct, but not the validity of jurisdiction based on mother's drug abuse, father's contentions would not justify a reversal and the Court of Appeal declined to address the issue and dismissed the appeal. The child was detained at birth after she tested positive for cocaine and the court subsequently took jurisdiction based on mother's drug abuse, the parents' domestic violence, and criminal histories. Father appealed and argued the findings against him were not supported by substantial evidence. Because Father's contentions, even if accepted, would not justify a reversal of the court's jurisdictional ruling or the grant of any other effective relief, the court declined to address them. The appellate court found it is commonly said the juvenile court takes jurisdiction over children, not parents and, as a result of this focus on the child, it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. The issues raised in father's appeal presented no genuine challenge to the court's assumption of dependency jurisdiction. As a result, the Court of Appeal held any order entered would have no practical impact on the pending dependency proceeding, which precluded a grant of effective relief making father's appeal nonjusticiable. The appeal was dismissed.

In re A.J. (2011) 197 Cal.App.4th 1095 (4th Dist., Div. 3) [Orange County]

Where mother used false allegations to attempt to gain custody of the child with help from the police, the court properly found the allegations for emotional harm true and affirmed the jurisdiction/disposition order. The child was detained when mother accused father of kidnaping and molestation to obtain a restraining order based on false information and attempted to use the police to remove the child from father's home. After a hearing on section 300, subdivisions (b), (c) and (g) petitions, the court sustained the petition, removed the child from mother, ordered physical custody to father, and dismissed jurisdiction. On appeal, mother challenged the sufficiency of the evidence to support the petitions. The reviewing court found mother's relentless and unreformed

behavior caused the child emotional harm because the child was traumatized, had nightmares, was afraid of mother, and believed her mother was crazy.

In re N.M. (2011) 197 Cal.App.4th 159 (4th Dist., Div. 1) [San Diego County]

A parent forfeits their right to challenge the sufficiency of the evidence on appeal when the parent participates in a negotiated settlement by way of an amended petition.

The 11-year-old child was detained after she was almost run over by her father in an incident while he was dropping her at school and she also reported physical abuse. The child recanted her statement and then said the recantation was untrue. She was afraid of her father and wanted to stay in foster care. Father is a single parent and refused to sign a safety plan because he believed it would be an admission of guilt. A settlement agreement amended the petition to remove the allegations of physical abuse, but father agreed to address any physical abuse in therapy. The court found jurisdiction and removed the child. Father appealed and challenged the sufficiency of the amended petition. The appellate court rejected father's challenge finding father forfeited his right to challenge the amended petition because he did not challenge it below and the issue is moot because the jurisdiction finding was supported by adequate evidence. Further, the agreement to a negotiated settlement constituted an implied waiver of father's right to appeal the sufficiency of the evidence.

In re J.S. (2011) 196 Cal.App.4th 1069 (6th Dist.) [Santa Clara County]

Reversal was not required where the juvenile court's error in terminating jurisdiction without making the required express finding was harmless.

After the filing of a dependency petition, the court granted physical custody of the child to the father and terminated jurisdiction. Mother appealed contending the court erred in terminating jurisdiction without an express finding in support of its decision as required by section 361.2, subdivision (c). The reviewing court found the trial court erred by failing to make the requisite finding but there was no reasonable probability the juvenile court would have reached a different result in the absence of the error.

In re R.C. (2011) 196 Cal.App.4th 741 (2d Dist., Div. 7) [Los Angeles County]

The juvenile court erred in dismissing sexual abuse allegations in a dependency proceeding where a 32-year-old adult engaged in tongue-to-tongue kissing with a 12-year-old.

Children were detained after 12-year-old reported that her 32-year-old step-father had French kissed her 3 times and they were in love. The juvenile court sustained the dependency petition but dismissed allegations of sexual abuse finding that, although the conduct was inappropriate, it was not sexual. The Court of Appeal reversed and remanded finding the juvenile court erred in concluding this conduct was not sexual abuse finding that French kissing between an adult and a 12-year-old child who described themselves as "in love" is inherently sexual.

DISPOSITION

Visitation

In re A.C. (2011) 197 Cal.App.4th 796 (2d Dist., Div. 4) [Los Angeles County]

Where oral and written visitation orders conflict, the oral orders are presumed more accurate and the court's oral orders did not impermissibly delegate authority to determine the circumstances of visitation. At disposition, the court's orders gave sole legal and physical custody to father with the parents to agree on a monitor to supervise visitation with mother. The written order gave custody to father with supervised visits "to be determined by the parents." Mother appealed arguing the court improperly delegated visits in its exit orders. The appellate court held the reporter's transcript is presumed more accurate and the trial court's order was not an impermissible delegation of authority re: whether visits would occur. The case was remanded to correct the written exit order.

Placement orders

In re K.C. (2011) 52 Cal.4th 231

When father did not challenge the termination of his parental rights, he does not have standing to appeal the order denying placement of the children with the grandparents. The Court granted review to determine whether a father who did not challenge the termination of parental rights has standing to appeal the order entered at the same hearing denying placement with his parents. The Court found a parent's appeal from a judgment terminating parental rights confers standing to appeal a placement order only if the placement order's reversal advances the parent's argument against terminating parental rights. Father in this appeal did not have standing because he was no longer an injured party. Nor does father gain standing because placement with the grandparents would potentially allow him to maintain a legal relationship with his child as his "brother." By acquiescing in the termination of his parental rights, father relinquished the only interest in K.C. that would make him an aggrieved party.

In re Miguel C. (2011) 198 Cal.App.4th 965 (1st Dist., Div. 5) [Alameda County]

The juvenile court properly removed child from mother in order to place with previously non-custodial father when ample evidence showed return to mother would be a substantial risk to child. The minor was removed from mother because of mental illness and drug abuse. Reunification was ordered for mother. Mother appealed arguing removal was inappropriate because reasonable alternative to removal existed and the court could have placed with the father without making a removal order from mother. The appellate court disagreed and found ample evidence that returning the child to mother would create a substantial risk and the court cannot award custody to a noncustodial parent without first removing the children from the custodial parent.

In re Mickel O. (2011) 197 Cal.App.4th 586 (5th Dist.) [Merced County]

Where discord between 2 sets of grandparents who each wanted custody caused the children confusion and disruption, the juvenile court properly denied maternal grandfather's section 388 petition requesting placement of the minors or unsupervised visits.

The reviewing court affirmed the denial finding evidence that the discord between the sets of grandparents did not further the goal of the children's best interest, which is stability and permanency. However, the evidence was the minors were bonded to their maternal grandparents and the court's order terminating the maternal grandparents' supervised visits was an abuse of discretion. Adoption by the paternal grandparents was not a foregone conclusion and termination of visits with the maternal grandparents was therefore an error. In addition, the dependency court should have actively pursued mediation between the grandparents.

Samantha T. v. Superior Court (2011) 197 Cal.App.4th 94 (4th Dist., Div. 1)
[San Diego County]

Where children did not have a close relationship with mother's friend, the court erred in finding the friend was a non-related extended family member (NREFM) under section 362.7. Minor's counsel filed writ challenging juvenile court's order placing children with Megan, a longstanding close family friend of mother's, and finding her an NREFM even though she did not have a close relationship with the children. The appellate court granted the minor's petition finding Megan did not qualify as an NREFM under the express language of the statute. Numerous families were interested in adopting the children as a sibling pair so Megan was not the only opportunity to establish a permanent home and Megan's close ties to mother presented obvious risks to the children's emotional stability and well-being. Placement with Megan was not in the children's best interest.

PRELIMINARY/CONTINUING CONSIDERATIONS

Paternity

In re P.A. (2011) 198 Cal.App.4th 974 (4th Dist., Div. 1) [San Diego County]

Where a child has both a presumed and biological father, the court must hold an evidentiary hearing to reconcile competing paternity interests. Minor was detained because of domestic violence between mother and step-father, Roger. Roger was found to be child's presumed father under Family Code, section 7611, subdivision (d), but genetic testing showed Alvaro is the child's biological child. Trial court entered judgment of paternity for Alvaro finding the DNA test rebutted the presumption of paternity for Roger. Roger appealed and argued the juvenile court erred by entering a judgment for Alvaro without considering Roger's competing interest. The Court of Appeal agreed and reversed with instructions that the trial court hold an evidentiary hearing in order to

reconcile the competing paternity interests to determine which of those interests are founded on the weightier considerations of policy and logic.

In re J.H. (2011) 198 Cal.App.4th 635 (2d Dist., Div. 8) [Los Angeles County]

The juvenile court erred by making an incomplete parentage ruling when it failed to determine biological paternity. Mother named Tyrone as the biological father but admitted she was married to George. Tyrone was not present at the child's birth and did not sign the birth certificate, but held out the child as his own, supported mother, and cared for his son. Tyrone requested to be found a presumed father and for a DNA test but the court denied his requests. The court found Tyrone to be an alleged father and George to be a presumed father. Tyrone appealed arguing the juvenile court violated his due process rights by denying him the opportunity to elevate his status to presumed father. The reviewing court disagreed finding Tyrone had an opportunity to chance his status when he was appointed counsel and the court held a hearing on paternity. However, the appellate court found the juvenile court should have determined whether Tyrone was the child's biological father because George was in prison for domestic violence against mother and was not expected to be released prior to the end of the reunification period. The court's failure to determine whether the child had another biological relative who could care for him was not harmless error.

In re Levi H. (2011) 197 Cal.App.4th 1279 (4th Dist., Div. 1) [San Diego County]

A voluntary declaration of paternity trumps presumed father status per Family Code, section 7611, subdivision (d), as a matter of law. The child, Levi, was born to Jade and Andrew. Andrew signed a declaration of paternity and Jade and Andrew married but divorced following Andrew's assault on Jade. Jade married Michael and a younger sibling was born. Both siblings were detained after the sibling suffered a head injury while in Michael's care. The juvenile court designated Michael as Levi's presumed father, but the court found the voluntary declaration of paternity by Andrew rebutted the presumption of Michael's presumed status. On appeal, Michael argued the court erred. The appellate court rejected Michael's argument and affirmed finding the voluntary declaration trumped Michael's claim as a matter of law and found there were not two conflicting presumptions subject to a weighing process.

In re D.R. (2011) 193 Cal.App.4th 1494 (2d Dist., Div. 3) [Los Angeles County]

Where a father refused to acknowledge paternity until six months after detention, his 388 petition requesting reinstatement of reunification was properly denied. Father argued his petition was improperly denied because he presented new evidence consisting of a declaration of paternity which established him as presumed father. Appellate court affirmed finding voluntary declaration was not properly executed because it was witnessed by mother's attorney, who was not authorized by section 7571 and was not filed with the agency within 20 days. Even if the declaration substantially complied

with the statute, the summary denial of 388 petition was proper since father refused to acknowledge paternity at the hospital, refused to sign the birth certificate, and waited to sign the voluntary declaration until 6 months after the child was detained. Given the circumstances, the juvenile court could properly conclude it was not in the child's best interest to offer father reunification services.

Presumed mother

In re Bryan D. (2011) 199 Cal.App.4th 127 (2d Dist., Div. 8) [Los Angeles County]

When a grandmother did not openly hold herself out as her grandchild's mother, the juvenile court properly denied grandmother presumed mother status but erred in denying her de facto parent status. The 12-year-old minor was removed from his grandmother after she left him alone and went to visit family in Mexico. Grandmother moved to be named presumed mother or, in the alternative, the de facto parent. The facts were undisputed that grandmother had raised Bryan but the trial court denied grandmother's motion. Bryan appealed and argued the court erred in denying grandmother presumed mother or de facto parent status. The appellate court found grandmother did not openly hold herself out as the child's mother. The appellate court affirmed the denial of the presumed mother status, but found the court abuse its discretion in denying grandmother de facto parent status. Grandmother had not abandoned her parental role, abused the child, or acted in a manner fundamentally inconsistent with parenthood and was otherwise indisputably qualified for de facto parent status.

REVIEW HEARINGS

Earl L. v. Superior Court (2011) 199 Cal.App.4th 1490 (4th Dist., Div. 3) [Orange County]

Termination of services was proper where an incarcerated father failed to show progress during the reunification period. Father sought writ relief from the juvenile court's order terminating his reunification services. Father was incarcerated and argued the court erred when it terminated reunification at the 18-month review hearing despite a finding the agency failed to provide adequate services. The reviewing court denied relief finding the juvenile court did not err in setting the section 366.26 hearing because it was not conditioned on the reasonable services findings. The appellate court found father failed to attend prison programs, made minimal efforts throughout the case, no possibility existed the child could be returned within an extended reunification period, nor the smallest chance father would benefit from services. Further, father did not object to the reasonableness of services at the 6- and 12-month review hearings and he should not be allowed to sit silently until the final review hearing and then seek an extension based on the inadequacy of services.

In re E.S. (2011) 196 Cal.App.4th 1329 (4th Dist., Div. 2) [San Bernardino County]
Oldest sibling's section 388 petition was properly denied where no evidence was presented the younger siblings had a bond with him. Appellant, the nonadoptive sibling, is the oldest of 3 children who became dependents. The minor was originally placed with his sibling but was later moved to a group home due to behavior problems. At the 12-month review hearing, the foster parents expressed a desire to adopt the younger siblings and appellant filed a 388 petition seeking reunification with his siblings or an order precluding their adoption. The juvenile court denied the petition and appellant appealed arguing the court abused its discretion in denying the petition and violated his due process rights by not permitting live testimony at the hearing. The appellate court affirmed finding that although appellate claimed a bond with his younger sibling and that adoption would have a negative impact on their relationship, there was no showing the younger siblings were bonded to appellant nor any evidence presented that the modification was in their best interest. Given the prior incidents of aggression by appellant toward the siblings, it could not be assumed the sibling had a positive relationship with appellant or the bond was reciprocal. Further, appellate cited no authority that a nonadoptive sibling has a due process right to cross-examine witnesses at a section 388 hearing.

In re A.D. (2011) 196 Cal.App.4th 1319 (4th Dist., Div. 3) [Orange County]
When the court held a review hearing without mother, the appellate court found the failure to provide statutorily-mandated notice of the hearing or a copy of the agency's report was harmless where mother did not show a more favorable result would have been likely absent the defect. Mother arrived at the courthouse after the 12-month review hearing where her counsel stipulated to termination of reunification and a permanent plan of long-term foster care. The juvenile court refused to vacate its order and mother appealed arguing she was not given proper notice of the hearing and she had a due process right to a contested hearing. The appellate court affirmed, finding failure to provide notice is subject to a harmless error analysis and mother did not show a more favorable result was likely absent the error. Mother had services for more than 3 years and the juvenile court found more services were not in the minor's best interest. Further, nothing in the record showed mother's lateness was due to a notice defect.

SECTION 366.26 HEARING

Termination of Parental Rights

In re K.H. (2011) 201 Cal.App.4th 406 (5th Dist.) [Madera County]
Where minors challenge application of the relative preference exception to adoption under section 366.26, subdivision (c)(1)(A), the stated preference of the relatives for guardianship is sufficient so long as the preference is not based on an unwillingness to accept legal or financial responsibility for the children. Children are 3 years old and

6 months old when detained and are placed with their maternal grandparents. After discussing adoption, the agency concluded the children and grandparents had close and loving attachments, and the detriment of separation from grandparents outweighed the prospects of placement with another unknown family or even another family member. The grandparents wanted to remain the grandparents and raise the children. The children argued the order selecting guardianship as their permanent plan must be reversed because the Legislature did not intend the relative caregiver exception to be based on the relative's mere preference for guardianship over adoption. The appellate court found the issue raised is one of statutory interpretation calling for an independent review. The reviewing court found it is apparent from the legislative history the Legislature intended that a relative caregiver's preference for legal guardianship over adoption to be a sufficient circumstance for application of the relative caregiver exception as long as that preference is not due to an unwillingness to care for and raise the children.

In re Z.K. (2011) 201 Cal.App.4th 51 (3d Dist.) [Tehama County]

The juvenile court abused its discretion by terminating mother's parental rights absent evidence of detriment because nonoffending, noncustodial mother was entitled to custody of her child. Mother's infant son was taken by his father, and although mother returned to Ohio, she never stopped looking for her son. She located her 5-year-old child through the internet and immediately contacted the agency. When mother contacted the agency, the dependency case had progressed to a section 366.26 hearing. The appellate court held mother had a constitutional right to custody of her child unless and until someone proved by clear and convincing evidence that giving her custody would be detrimental to the minor. Mother contacted the agency and requested custody but, when an ICPC suggested mother did not meet the agency's requirements, the agency sought to terminate her parental rights. The appellate court found the juvenile court violated mother's constitutional right to due process by terminating her parental rights without finding mother had abandoned, abused, or neglected her son or that return of the child to his mother would be detrimental. The appellate court reversed and remanded with directions to place the child with his mother.

In re Hunter W. (2011) 200 Cal.App.4th 1454 (2d Dist., Div. 4) [Los Angeles County]

When a parent is absent from the section 388 petition hearing, the juvenile court erred in denying a brief delay and proceeding without the parent. The trial court granted a hearing on the parents' 388 petition which was heard the same day as the section 366.26 hearing. On the day of the hearing, the parents checked in at calendar call but were absent when the court reconvened hours later. Counsel requested a brief delay to locate the parents. The court denied the continuance, proceeded with and denied the 388 petition. The court then terminated parental rights. The reviewing court reversed finding an abuse of discretion not to move the case to the afternoon calendar and because the parents were unable to present their positions in a meaningful way. The orders per section

366.26 were also reversed because a fair hearing on the 388 petition was a procedural predicate to the section 366.26 disposition.

In re T.W. (2011) 197 Cal.App.4th 723 (2d Dist., Div. 8) [Los Angeles County]

Where mother's address was correct and it was likely mother received the notice despite the absence of the zip code, the Court of Appeal held mother is not excused from complying with the writ requirement and her appeal was dismissed. Mother was absent from the referral hearing and written notice was sent to the correct address except for a missing zip code. Mother appealed the order terminating her parental rights to 2 of her 11 children. Specifically, mother contended she is entitled to challenge the court's disposition order which denied her reunification services based on a lack of proper writ notice. Mother did not file a writ petition and did not challenge the adoptability of her children or assert that one of the exceptions to adoption applied. Instead, mother argued the trial court erred in denying her reunification services at the disposition hearing. The appellate court noted mother's notice was not returned to the sender, indicating it was indeed received. Further, mother offered no declaration stating she did not receive the writ advisement, nor does her brief claim that she was not aware of the writ requirement. Mother contends only that "an incomplete, and, therefore, incorrect address which failed to include the zip code" is insufficient to show proper notice. The court disagreed finding mother was not relieved of the writ requirement because she likely received notice under the facts of the case. The court granted the agency's request to dismiss.

MISCELLANEOUS

Termination of Probate Guardianship

In re Xavier R. (Dec. 16, 2011, F062682) ___ Cal.App.4th ___ [2011 WL 6274443] (5th Dist.) [Tulare County]

After children were removed from their guardian in a dependency action, the juvenile court can terminate the legal guardianship even though the guardian is receiving reunification services. Linda M. is the paternal grandmother and guardian of 2 brothers aged 11- and 10-years-old with serious mental and emotional problems. Children were declared dependents based on Linda's inability to set proper boundaries and failure to provide a stable home and appropriate care for their emotional problems. The agency filed and the trial court granted a motion to terminate Linda's Probate Code guardianship. Linda appealed arguing the juvenile court did not have the authority to terminate the guardianship once she was given reunification services unless it first granted a petition to terminate her reunification under section 388 and insufficient evidence supported the termination of the guardianship. The appellate court affirmed finding section 728 gives the juvenile court authority to terminate a probate guardianship at any stage in the dependency proceeding. As for whether the evidence was insufficient to support the termination of her guardianship, the court found the sole criterion for termination of a

probate guardianship is whether termination is in the minor's best interests. The reviewing court affirmed the termination of the guardianship finding the guardianship was no longer effective for the boys, however, not necessarily due to any lack of effort on Linda's part, but because their mental health problems were so severe that Linda could not meet their needs.

Injunction Against Parent

In re M.B. (2011) 201 Cal.App.4th 1057 (4th Dist., Div. 2) [San Bernardino County]

Where mother repeatedly yelled, cursed, and made veiled threats to social workers, agency receptionists and security guards, the trial court is authorized to order an injunction prohibiting contact with the agency's employees and the social worker's hearsay declaration was admissible at the injunction hearing.

The infant son of mother was detained and over the course of the dependency, mother repeatedly yelled and cursed at agency employees, tied up the agency's phone with harassing and hang-up calls, and eventually pled guilty to 1 count of making a criminal threat based on her conduct towards a social worker. The trial court issued an injunction that allowed mother to contact the agency only through her attorney, in writing, or in response to contact initiated by the social worker. On appeal mother contended the juvenile court did not have the authority to issue this type of injunction, insufficient nonhearsay evidence existed to support issuance of the injunction, and the injunction violated mother's constitutional due process and freedom of speech rights. The appellate court held that even if the juvenile court lacked statutory authority to issue the injunction, its inherent authority to prevent abuses that undermine the proper administration of justice was sufficient. The court went on to find that although the social workers' declarations did not fall within any exception to hearsay, a dependency exception existed for social worker reports. The order appealed from was affirmed.

Rehearing of Disposition Orders

In re K.A. (2011) 201 Cal.App.4th 905 (2d Dist., Div 4) [Los Angeles County]

Trial court's error in not timely holding a rehearing of the disposition order is harmless because father failed to demonstrate that he was prejudiced by the delay.

Following disposition orders made by a juvenile court referee, the agency requested a rehearing by a juvenile court judge. The rehearing was held after the deadline for a rehearing provided by Calif. Rules of Court, rule 5.542(e) [within 10 court days]. The appellate court found the rule establishing the deadline had no provision setting out the consequences for violation of the deadline and father fully participated in the rehearing and testified. The Court of Appeal affirmed the disposition orders as modified.

When Minor Has Tort Claim Against County

In re Nicole H. (2011) 201 Cal.App.4th 388 (3d Dist.) [Modoc County]

When a dependent minor has a potential tort claim against the county, the juvenile court must appoint a separate guardian ad litem (GAL) to act on the minor's behalf and a CASA appointment is insufficient. The 13-year-old minor's appointed trial attorney filed a written request for an order to allow him to find a GAL who would hire a tort lawyer because the child had been raped by another minor at the foster home and law enforcement was investigating. Later, he asked the court to appoint another GAL arguing he worked for the law firm that held the public defender contract for Modoc County and he thought the contract might prohibit him from filing a claim against the county on behalf of his client. Opinion reviews the legal authority for requested relief and the duties of a GAL in such a situation. The appellate court reversed the order denying appointment of a separate GAL and remanded to the juvenile court with directions to expeditiously appoint a GAL to oversee the potential tort action and to appoint independent counsel on a pro bono basis to investigate the tort claim.

Disclosure of Medical Records in Sex Abuse Case

Karen P. v. Superior Court (2011) 200 Cal.App.4th 908 (2d Dist., Div. 5) [Los Angeles County]

A minor does not waive the physician-patient exception by disclosing sexual abuse by her father, and the patient-litigant exception is not triggered, when the minor submitted to a forensic medical exam prior to the filing of a dependency petition. After the filing of the petition the father subpoenaed medical records involving the child's sexual history. The child filed a motion to quash the subpoena as privileged under Evidence Code, section 994. The superior court denied the motion to quash finding the child's medical condition was "being put at issue." The child sought writ review. The appellate court granted the writ of mandate finding the child did not tender her medical condition. Further, when the agency filed a petition, it was not doing so as a representative of the child and the child was a party in her own right and her interests were separately represented by counsel. Consequently, the filing of the petition did not extinguish the child's physician-patient privilege.

Married Minor Emancipated

In re J.S. (2011) 199 Cal.App.4th 1291 (3d Dist.) [San Joaquin County]

Where the juvenile put no restrictions on mother's authority during the dependency, the juvenile court erred in denying mother's motion to dismiss the dependency where mother consented to her minor's daughter's marriage in Nevada. A petition based on physical abuse of a teenaged minor was sustained and she was placed with her mother with no conditions. The agency subsequently filed a motion to dismiss the dependency due to the pregnant minor's marriage which had been consented to by mother. The juvenile court refused to dismiss the petition, opining the court's consent was

needed for the marriage so no basis existed to emancipate the child. The court ordered the minor to remain a dependent and ordered her to remain in her grandfather's home. Mother and minor appealed and the agency argued the appeal was moot because the court subsequently dismissed the dependency. The appellate court disagreed, finding the exit orders depended on a determination the minor was not emancipated which made the appeal not moot. The agency conceded the juvenile court erred in failing to grant the agency's motion to dismiss based on the child's emancipation by marriage. The appellate court agreed and reversed the finding the juvenile court never removed the child from her mother, did not limit or restrict mother's control and custody, and mother retained the right to transport the child to Nevada and to consent to her marriage.

Court Has Authority To Order Agency To File A Petition

In re M.C. (2011) 199 Cal.App.4th 784 (1st Dist., Div. 5) [San Francisco County]

The juvenile court has the authority to review the agency's decision declining to file a dependency petition, and that authority does not violate the separation of powers doctrine. The child ran away from home in Guatemala when he was 16 years old and was found homeless in San Francisco. The agency investigated and declined to file a petition. The child applied for juvenile court review and the trial court ordered the agency to file a dependency petition. The agency petitioned for writ of mandate and the appellate court denied the petition. The appellate court rejected the argument in this issue of first impression finding that under the authority of section 331, the juvenile court may order the agency to file a dependency petition and this authority does not violate the separation of powers doctrine because the court will subject the social worker's determination to review.

Parent Must Exhaust Administrative Remedies

In re C.F. (2011) 198 Cal.App.4th 454 (4th Dist., Div. 3) [Orange County]

Motion for an order directing the agency to change its finding on a child abuse report from substantiated to unfounded and to remove mother's name from the Child Abuse Central Index is not proper prior to exhaustion of administrative remedies. The appellate court reversed a jurisdiction/dispositional order that sustained allegation of a petition filed under section 300, subdivision (a). After the remittitur issued, mother filed a motion in juvenile court seeking reversal of the agency's prior actions. The juvenile court treated the motion as a writ of mandamus and denied mother's motion for failure to exhaust administrative remedies. The appellate court affirmed finding the mother had not commenced grievance procedures with the agency and had not exhausted her administrative remedies. Further, the Court of Appeal considered without resolving that the order reversing the jurisdiction/dispositional orders meant the juvenile court did not have jurisdiction over the child so the juvenile court did not have jurisdiction over mother's motion.

Reunification When Guardianship Ends

In re S.H. (2011) 197 Cal.App.4th 1542 (1st Dist., Div. 3) [Sonoma County]

The juvenile court erred when it refused to revisit reunification issue following a change in guardians for the minors, but the error was harmless. Minor was placed in a legal guardianship as a permanent plan after bypass of reunification to mother because she caused the death of another child due through abuse. A hearing was scheduled to terminate guardianship at the guardian's request. The agency recommended a new guardianship be established and mother requested a reconsideration of reunification services. The court denied her request and changed her visits from monthly to twice annually. On appeal, mother contended the court erred in refusing to revisit reunification and limiting her visitation. Although the reviewing court agreed the juvenile court should have reconsidered mother's request for reunification, it found the error was harmless. Given the record, no reasonable probability existed that a more favorable result would have occurred if the court had reconsidered reunification. Further, the court's order reducing the frequency of visits was appropriate. The trial court properly focused on the child's attachment to her new caregivers without the unnecessary disruption from mother, who was openly hostile to the foster parents.

Guardianship of Christian G. (2011) 195 Cal.App.4th 581 (1st Dist., Div. 2) [Mendocino County]

Where the probate court has received information constituting an allegation of unfitness, whether from the investigator's report or from the pleadings themselves, it was obligated to order the case referred to CPS. The issue presented by father on appeal is whether a 4-year-old developmentally-delayed, possibly autistic child should be kept under a probate guardianship with his ex-convict uncle and wife or returned to his father, who appeared to be mentally ill and had previously provided inadequate care for the child. The uncle made an unannounced visit to father's house and found father's mobile home in squalid condition – stacked full of trash, an open oil burning stove being used as a heater, no operating toilet, and the child hooked into a harness and staked in the yard. The uncle filed a petition for temporary guardianship on advice of CPS. The petition was granted and the relative took custody of child. The father objected on the grounds it was not necessary and the uncle was not a good choice for guardian. The relatives were ordered permanent guardians and father appealed. He argued the court erred because the failure to refer the case to CPS was a statutory error and a denial of due process because father was never appointed an attorney. The appellate court agreed finding father was deprived of certain procedural safeguards when the probate court failed to refer the case to CPS after it became apparent the uncle's allegations amounted to a charge that father was an unfit parent.