APPELLATE DEFENDERS, INC.

RECENT TRENDS IN DEPENDENCY CASE LAW

October 2017 through July 2018

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In re I.C. (2018) 4 Cal.5th 869 [Calif Supreme Court] (Alameda)

Where a child's statements are unclear, confusing, not credible & unreliable in significant respects but the trial court found the statements' reliability outweighed the indicia of unreliability, the California Supreme Court held the trial court erred and reversed the judgment. The case involves a 3-year-old child who is not truth-competent to testify about the alleged sexual abuse by her father. Although a child's out-of-court reports of parental abuse are admissible regardless of whether the child can separate truth from falsehood, the juvenile court may not base its findings solely on the child's hearsay statements unless they bear "special indicia of reliability." In reviewing the rule found in *In re Lucero L*. (2000) 22 Cal.4th 1227, the Supreme Court held the evidence supporting the jurisdictional finding must be considered "in the light of *the whole record*." The juvenile court declared I.C. a dependent & found father had sexually abused her. Father appealed. The Supreme Court found the record showed the evidence supporting I.C.'s reliability was weaker than the juvenile court acknowledged. A few months before I.C. spontaneously accused her father of putting his penis in her vagina, I.C. was sexually assaulted by an 8-year-old neighborhood boy which was witnessed by I.C.'s brother & mother. After the assault, the police were called & I.C. was examined by a doctor. Two months after the incident, I.C. saw the same boy when the family took her brother to school. A few days after seeing the perpetrator, I.C. spontaneously said her father had put his penis in her vagina. Mother admitted after I.C. was assaulted by the neighborhood boy, she spoke to I.C. about it several times & used words such as "penis" & "vagina." In addition to accusing father, I.C. made other statements which were patently untrue including father had sex with his adult daughter from a prior marriage, a penis is the same thing as a toy train & father put both in I.C.'s vagina, & father had sex with her on the mat in the interview room. The juvenile court acknowledged in its ruling that these were not true. The Supreme Court held the timing & content of I.C.'s allegations concerning her father strongly suggested a relationship to the earlier molestation. Since the trial court made its jurisdictional finding based entirely on the child's hearsay statements, this was error & the Court of Appeal reversed.

In re E.A. (2018) 234 Cal.Rptr.3d 346 [4th Dist., Div 1] (San Diego)

The trial court erred in granting the agency's motion to dismiss the petition after the court found the parents had abandoned their children per section 300, subd. (g) & the error was not harmless. After the children appealed, the Court of Appeal reversed the juvenile court's dismissal of the dependency petition & remanded the case to the juvenile court for further proceedings consistent with the opinion. The children, aged 14 & 11 years old, came to the attention of the agency after they were found in deplorable living conditions with their parents in Tijuana, MX. When the Mexican Dept. of Integrity of Families (DIF) became involved, the parents & children were living in an abandoned house with no electricity & no running water; the children had not been to school in over

a year, & looked anorexic because they were usually given only one meal a day. DIF detained the children, but the parents declined to do anything to reunify with the children, & the girls were left abandoned at a DIF shelter for seven months. The DIF asked the agency to become involved because the minors are United States citizens who were abandoned by their parents. The children were placed with their maternal grandmother in California & appeared to thrive. They both expressed that they did not want to return to their parents because they did not want to go hungry again. The parents did not cooperate with DIF or the agency to reunify, &, with the exception of one phone call, did not visit the children, call them, or check on their welfare for more than a year. The Court of Appeal held the trial court misinterpreted section 300, subd. (g), when it dismissed the petition because jurisdiction is proper under any of the four listed criteria in the statute. Since the juvenile court found 1 criteria applied, it was improper to dismiss the petition. The error was prejudicial since the evidence made clear the parents wanted the children returned to them to live in Tijuana & they planned to remove the children from their maternal grandmother. The appellate court also held the juvenile court misinterpreted *Allen M. v. Superior Court* (1992) Cal.App.4th 1069 which holds that when the agency wishes to dismiss a petition over the child's objection the juvenile court must determine whether dismissal is in the interests of justice & the welfare of the minors. Here, the trial court refused to consider these factors when granting the agency's request to dismiss & held that, since the children were being cared for by grandmother, subdivision (g) did not apply. Without considering the totality of the circumstances, a juvenile court cannot properly determine whether dismissal promotes the child's welfare. The dismissal of the petitions put the minors at a very substantial risk of being taken from grandmother & returned to the same abominable conditions that led to these proceedings. [W. Hook - children; N. Gold - father; P. Dikes - mother]

In re Daniela G. (2018) 23 Cal.App.5th 1083 [1st Dist., Div. 1] (San Francisco)
The trial court properly weighed the competing interests in its analysis of *In re Jennifer J.* (1992) 8 Cal.App.4th 1080, to excuse the testimony of the daughter & stepdaughter based on psychological injury at the jurisdiction hearing alleging sex abuse by father. Father was found in bed with his 13-year-old stepdaughter after which the stepdaughter confirmed two years of sex abuse & 8-year-old Daniela described being massaged by father in what appeared to be grooming for future sex abuse. Father subpoenaed both girls for the jurisdiction hearing but two social workers opined that having Daniela testify would be extremely detrimental because of her age & the nature of the allegations. Daniela had not disclosed any sex abuse by father. The stepdaughter was "very fearful" & "very embarrassed" & felt "a tremendous amount of guilt that she hadn't come forward earlier to protect Daniela." The trial court excused the testimony of the 2 girls & father appealed. Initially, the appellate court held father forfeited his argument the girls could have testified in chambers since he did not raise this argument in the trial court. Next, the Court of Appeal held the juvenile court has the discretion to exclude the

testimony of a child in order to avoid psychological harm even though that testimony is relevant, the child is competent to testify, & the child is both practically & legally available to testify according to *Jennifer J*. The opinion found that Daniela's testimony would not materially affect the court's resolution of either the jurisdiction or visitation issues since she did not disclose sex abuse by father. As for the stepdaughter, whose statements were critical, the Court of Appeal held she described the sex abuse in out-of-court statements, father did not deny the details of being in bed with her &, although he denied sex abuse, he did not suggest how the child could be impeached. The juvenile court can reasonably conclude that forcing a child to testify would not materially affect its credibility assessment. Finally, the evidence taken as a whole was sufficient to support the determination that Daniela would be traumatized by having to testify. Based on these findings, the appellate court affirmed. [J. Tavano]

In re D.L. (2018) 22 Cal.App.5th 1142 [2d Dist., Div. 1] (Los Angeles)
At the time of the jurisdiction hearing, any risk of future danger to D.L. posed by father keeping a loaded gun in the house was entirely speculative &, consequently, the appellate court reversed the jurisdictional finding against mother. Father was arrested for carrying a loaded firearm in public &, two weeks later, a loaded rifle, ammunition & gun parts were found in an unlocked bedroom closet in the room where two-year-old D.L. resided. The juvenile court took jurisdiction based on father keeping a loaded rifle in a location accessible to D.L. & for mother's failing to protect. Mother appealed. Finding father was no longer living with mother & D.L., that he was not welcome in the home, & because father recognized he either needed to remove the gun or have it locked up, any future harm would be speculative. Reversed jurisdiction against mother but affirmed the disposition orders. [R. Keller]

In re S.K. (2018) 22 Cal.App.5th 29 [4th Dist., Div. 2] (Riverside)
Finding mother shared in the responsibility to provide information in the search for relatives for placement, the trial court's order finding the agency used due diligence in searching for possible relative placements was affirmed. After S.K. tested positive in the hospital, mother absconded with him but, a month later, S.K. was admitted into the hospital with an overdose of oxycodone. For placement, mother named the mother of one of father's adult children (S.N.), a maternal great-aunt (S.B.), & the paternal grandmother (C.W.). The agency contacted S.N. & repeatedly attempted to call mother for more information about S.B. and C.W. Mother was unable to provide S.B.'s married last name. At the next hearing, mother revealed C.W. is deceased & claimed she already provided the phone number for S.B. even though the social worker did not have it. Based on this, mother argued on appeal that the agency failed to exercise due diligence in locating & contacting relatives for placement. The appellate court found the agency was searching for father & other paternal relatives, searched for the maternal great aunt with the available information, & appropriately tried to obtain more information from mother.

Since mother did not provide complete contact information & was difficult to reach, the appellate court found mother shared in the responsibility to search for relatives, & affirmed the trial court's finding of due diligence. [D. Chirco]

In re A.L. (2018) 18 Cal.App.5th 1044 [2d Dist., Div. 1] (Los Angeles)
The Court of Appeal found that where the family acted to resolve an episode of mental illness & where no one was injured, the juvenile court improperly asserted jurisdiction over children aged 15 and 11 years old because of mother's mental illness or father's failure to protect the children. Mother suffered from schizophrenia & paranoia for some time without becoming physical. However, the case began because of her first incident in a manic episode where she threw a shoe that accidently hit one of the children & the older son physically restrained mother while father contacted the police for help. Mother was placed in a psychiatric hospital where she resumed taking her medications. According to the family, this was the first time mother had become physical & the children were never alone with her since father or the paternal grandmother was always present. The appellate court found the facts did not support the juvenile court's conclusion the children were at substantial risk of serious physical harm due to father's failure to protect because the children were otherwise well cared for, this was the first such incident involving mother becoming physical, no one was injured, & father acted quickly to obtain help. The court reversed the jurisdictional order and vacated all subsequent orders as moot. [L. Serobian]

In re Alexzander C. (2017) 18 Cal.App.5th 438 [2d Dist., Div. 8] (Los Angeles)
Father argued jurisdiction & removal of the children from his custody was improper since the children were well cared for, but the appellate court affirmed finding: mother & father's daily drug use set a wrong example for the children; father denied he needed help to resolve his 25-year long use of methamphetamine; the children were learning from father's conduct that drug use was an appropriate means of coping with life's difficulties; & it was reasonable to conclude the children had access to drugs used by both parents. The family had a prior dependency case in 2009 which ended when mother moved to Canada & father was granted sole custody. Mother returned to live with the family in 2013 or 2014 & a new referral was generated in 2016 alleging the parents were drug addicts, father was a gang member, & he sold drugs from the home. The juvenile court held the children were at substantial risk of serious harm & took jurisdiction. Father appealed. The parents did not deny they used methamphetamine daily but contended the children were not harmed because they were well groomed & clean, went to school regularly, got good grades, the home was in good condition, & the children, aged 13 and 11 years old, were unaware their parents used drugs. Relying on *In re Rocco M*. (1991) 1 Cal.App.4th 814, the Court of Appeal held the parents met the criteria for methamphetamine abuse disorder and jurisdiction was proper. Further, removal was proper because the parents had not started drug treatment, mother

had previously failed to comply with the court's orders, father allowed mother to return home knowing she continued to use drugs, & the danger to the children was ongoing until the "parents fulfilled the court's reunification orders." [D. Rooney]

Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

In re Aiden L. (2017) 16 Cal.App.5th 508 [2d Dist., Div. 7] (Los Angeles)

The Court of Appeal vacated the order terminating parental rights & remanded the case with directions for an evidentiary hearing to determine whether California properly exercised subject matter jurisdiction under the UCCJEA. Mother & father lived in Arizona for most of their adult lives & had three children. The two older children were voluntarily relinquished to the maternal grandparents in Arizona. Mother & father came to California with their youngest child four months before a dependency petition was filed after mother was arrested & father tested positive for methamphetamine & marijuana. When detained, Aiden was approximately four years old. Although the parents & grandparents requested Aiden be placed with the grandparents in Arizona, he was placed with his maternal great aunt in California. The Court of Appeal held the juvenile court may have properly exercised emergency jurisdiction but, after that, subject matter jurisdiction had to be addressed. Here, the issue was not raised by the agency or addressed by the trial court. Two years after Aiden was detained, the trial court denied his siblings' section 388 petition for placement with the grandparents and terminated parental rights. The parents, maternal grandparents, & the siblings appealed. The Court of Appeal held it is the responsibility of the juvenile court in the first instance to hold an evidentiary hearing to determine whether any basis exists under the UCCJEA for it to exercise subject matter jurisdiction & to make child custody orders. The opinion sets out several issues that must be addressed by the trial court on remand including evaluating witness credibility, resolving conflicts in the evidence, & making factual findings about Aiden's home state when the petition was filed. The court's order terminating parental rights was vacated and the case was remanded for the juvenile court to proceed in conformity with the requirements of the UCCJEA. [J. McGowan]

Section 241.1

In re Aaron J. (2018) 22 Cal.App.5th 1038 [1st Dist., Div. 4] (San Francisco)

The appellate court considered the appropriate procedure for determining whether a juvenile who appears to be within the description of both section 300 and section 602 should be treated as a dependent or a delinquency ward pursuant to section 241.1. After then-dependent juvenile Aaron was declared a ward of the court, his attorney filed a motion under sections 388 & 778 asking the trial court to set aside its wardship determination & reinstate him as a dependent. His motion was denied & he appealed. After what can only be described as an extremely abusive & traumatic childhood, Aaron started with court involvement at 12 years old in a delinquency case in 2010. Two years later, the agency filed a dependency petition alleging his legal guardian could not safely

maintain Aaron due to Aaron's physically & verbally assaultive behaviors. He returned to his guardian's home but that was followed by 6 wardship petitions through 2015. After the last one, a contested disposition was held to determine if Aaron should remain a dependent or be declared a ward under section 241.1. The Court of Appeal declined to reach the issue of whether the San Francisco protocol for section 241.1 violates state law. The assessment committee under section 241.1 recommended Aaron be declared a ward. On the other side, the child's CASA strongly urged that Aaron be maintained as a dependent since he had been improving with his current team & he did not do well with change. In all, six witnesses testified that it was critical for Aaron's rehabilitation that he keep the same treatment team. The Court of Appeal found problems with the timing of the report as required by statute. However, even if the timing was in error, the error was harmless. As for whether the denial of the modification petition was error, the appellate court found the trial court considered all the evidence & determined wardship was appropriate believing Aaron would benefit from a "different approach." The opinion also held sufficient evidence supported the trial court's finding that Aaron committed 2d degree robbery.

In re R.G. (2017) 18 Cal.App.5th 273 [4th Dist., Div. 2] (San Bernardino)
In reversing & remanding, the Court of Appeal found the assessment report was not timely provided to the parties, was statutorily inadequate, & the errors were not harmless. In 2013, the juvenile court declared R.G. a dependent based on drug abuse by her parents. In 2016, the People filed a juvenile wardship petition based on an allegation of misdemeanor battery. Prior to the November 2016 hearing on the delinquency petition, the probation dept. filed a report. At the November hearing, minor's counsel requested the case be sent to the section 241.1 court before the delinquency petition was resolved. The trial court declined & found R.G. was a ward of the court under section 602 & placed him on formal probation. On December 12, 2016, a joint agency & probation section 241.1 report was filed. The joint report recommended R.G. be placed on informal probation & remain a dependent. At the December hearing, the trial court found R.G. was a ward with agency "lead jurisdiction." The Court of Appeal found the People should have arranged for a section 241.1 assessment & report prior to the filing of the wardship petition. Notice of the hearing & a copy of the assessment report must be provided to interested parties at least five calendar days before the hearing. Here, the 241.1 report was not filed until 46 days after the filing of the wardship petition & 20 days after the November hearing. The opinion held the report lacked input from minor's counsel in the dependency case, or any input from any CASA in the case including a court CASA or educational advocate CASA, lacked R.G.'s education records, & had a complete lack of any substance about the dependency proceedings including whether reunification services or parental rights had been terminated. R.G. argued the trial court erred by failing to provide a statement of reasons at the December hearing when it expressly noted it had no findings or orders & continued the question of minor's status to another date. The

appellate court agreed. Since the trial court made its original findings in November, it was unclear whether the court even read the joint 241.1 assessment. The Court of Appeal found these errors were not harmless because due process may be implicated where a required report is completely omitted. Finding the juvenile court relied on the report filed only by the probation department, R.G.'s due process rights were implicated, & the errors were not harmless. The court reversed for a new hearing.

DISPOSITION

Placement

In re A.F. (2017) 18 Cal.App.5th 833 [4th Dist., Div. 1] (San Diego)

The Court of Appeal affirmed the trial court's order removing A.F. from the placement recommended by the agency & her Indian tribe & placing her with her paternal grandmother. A.F. was detained as an infant after the 18-month-old child of father's girlfriend was found dead while in father's care in a trailer on paternal grandmother's property. Father was arrested & charged with murder & mother was unable to take custody of A.F. because of drug use. The tribe intervened & recommended placement with A.F.'s maternal cousin on the tribal reservation. The paternal grandmother repeatedly requested placement, retained an attorney, requested de facto status, & filed a section 388 petition for custody. The juvenile court found the two placements were equivalent but was unsure whether to apply the relative placement preference [361.3] or the ICWA placement preference [361.31]. The decision to move A.F. to her grandmother's was based mostly on A.F.'s severe diaper rash which had since resolved. The agency found the cousin had been diligent in seeking treatment. The trial court relied on the diaper rash issue to change placements contrary to the tribe's preference. The Court of Appeal held that since the tribe's letter designating the cousin as the preferred placement was not a "resolution" as required by the federal statutes, the juvenile court's decision to ignore the tribe's preference was not error under a de novo standard of review & statutory interpretation. [T. Chucas]

PRELIMINARY/CONTINUING CONSIDERATIONS

Indian Child Welfare Act (ICWA)

In re C.A. (2018) 234 Cal.Rptr.3d 319 [4th Dist., Div. 1] (San Diego)

In a case of first impression, the Court of Appeal found a presumed father's claim of Native American heritage was not sufficient to trigger notice per the ICWA. The case began because C.A. was born with methamphetamine in her system. C.A. had a presumed father & a biological father. The presumed father initially claimed Indian heritage but later recanted. Because he is not biologically related to C.A., the appellate court held the ICWA did not apply & affirmed. [E. Min - mother; P. Swiller - presumed father] [See also under Beneficial-Relationship Exception.]

In re K.R. (2018) 20 Cal.App.5th 701 [4th Dist., Div. 2] (Riverside)
Where the agency failed to document any efforts to talk to extended family members about possible Indian heritage & where the paternal grandmother & aunt were available & the agency had the paternal grandfather's last known address, the appellate court held the agency & juvenile court failed to fulfill the duty of inquiry & conditionally reversed the case to comply with the ICWA. Mother argued, & the Court of Appeal agreed, the agency did not investigate the children's possible Cherokee heritage & omitted mandatory information from the ICWA notices. The notices included only father's & paternal grandfather's information but had limited facts for paternal great grandfather. Presumably, the paternal family could provide more complete information for the ICWA notice. Since the trial court did not inquire as to what efforts the agency made to contact relatives for ancestor information, the court failed in its duty to ensure compliance with the ICWA & the case was conditionally reversed with directions. [E. Klippi]

In re Elizabeth M. (2018) 19 Cal.App.5th 768 [2d Dist., Div. 7] (Los Angeles)
The Court of Appeal conditionally reversed & remanded the case for the agency & the trial court to comply with the inquiry requirements of the ICWA because the agency failed to ask relatives for further information about possible Indian heritage. The case began because of allegations of physical abuse of the oldest child, who was then 2 years old, & mother observed the abuse & failed to protect her son. The children were returned to their mother for nine months but then they were removed again because of physical abuse by mother. After the children were removed a second time, the boys & the girls were placed in two separate foster homes. At the time of the section 366.26 hearing, the girls had been in an adoptive placement for more than a year. The boys were still looking for an adoptive placement & cousins in Texas were being assessed. The appellate court held the agency thought the tribe identified by father was a federally-recognized tribe & so limited notice was sent only to the BIA but not to a specific tribe. The appellate court found, however, that even though the tribe was not on the list of recognized tribes, the agency was still required to ask relatives for further information as part of an ICWA inquiry. The agency failed to do this & it was error resulting in a conditional reversal. [J. Moran] [See under Sibling Exception.]

6-MONTH REVIEW HEARING
W.P. v. Superior Court (2018) 20 Cal.App.5th 1196 [4th Dist., Div. 2] (San Bernardino)
Where three of the four children were older than three years old & were placed apart from the youngest sibling, section 361.5, subd. (a)(1)(c), required the trial court to order 12 months of reunification services for the older children. At the six-month review hearing, the juvenile court found mother had made no progress in reunification & terminated services & set a section 366.26 hearing. Mother filed a petition for extraordinary writ. Mother argued, the agency conceded, & the Court of Appeal

agreed that mother was entitled to 12 months of reunification services under a de novo standard of review. At the start of the case, the children were aged three months & six, 10 & 12 years old. The older children were placed in a separate foster home from their infant sibling. Since the placement was different, & the older siblings were older than three years old at the time of removal, the trial court was required to grant mother 12 months of reunification services. The appellate court granted mother's petition for extraordinary writ.

12-MONTH REVIEW HEARING

In re Sophia M. (June 26, 2018, G055752) ___ Cal.App.5th ___ [2018 WL 3122024] (4th Dist., Div. 3) [Orange]

Mother unsuccessfully argued the trial court failed to enforce its visitation order & improperly denied mother the ability to argue for the beneficial-relationship exception at the section 366.26 hearing. The appellate court found the trial court's visitation order was proper &, given that Sophia was 15 years old, the juvenile court was not required to ensure those particular efforts at visitation were ultimately effective. The case began for Sophia & her six siblings or half-siblings because mother was using methamphetamine, was homeless, & left her children with the maternal grandmother & other relatives without provisions or authority to obtain medical care. Mother did little & visited rarely for 12 months. Just prior to the 12-month review hearing, mother began services & began to request visits with Sophia. By then, Sophia was refusing visits & all contact from mother including reading her letters. In affirming, the Court of Appeal held the juvenile court's visitation order complied with the visitation statute. The Court of Appeal reviewed the opinion in *In re Hunter S*. (2006) 142 Cal.App.4th 1497 which found the juvenile court erred in ordering visitation "as can be arranged." In distinguishing *Hunter S*., the appellate court found it disagreed with the opinion to the extent *Hunter S*. suggested the court erred in failing to enforce its visit order. Instead, finding that when a child refuses visitation, it is the parent's burden to request a specific type of enforcement or a specific change to the visit order. It is not the juvenile court's burden sua sponte to come up with a solution to the intractable problem of a child's steadfast refusal to visit a parent. Often the parent has irreparably damaged the relationship beyond salvage. If, after reasonable efforts have been exhausted to encourage visits, the child simply cannot be persuaded to visit, that, in & of itself, is not a basis for reversal. The judgment was affirmed. [W. Hook]

T.J. v. Superior Court (2018) 21 Cal.App.5th 1229 [1st Dist., Div. 4] (San Francisco)

The Court of Appeal granted mother's petition & ordered additional services holding the trial court erred at the 12-month review hearing in finding mother was given reasonable reunification services. After reviewing the delay in all the services offered to mother, the appellate court found the agency had failed to provide mother with timely reunification services describing the agency's efforts as half-hearted. Mother had

been diagnosed with depressive disorder, mild mental retardation, and a personality disorder not otherwise specified. The case began because mother was not administering the complicated regimen of 8 separate medications required to treat her 8-year-old's severe asthma, eczema & environmental allergies; the home had bed bugs, cockroaches, mold & a hole in the ceiling; & the home was dirty, cluttered & smelled of mold. Mother was granted reunification services while the boys, aged 8, 4 & 2 years old, were placed with the maternal grandmother. In reviewing what services were offered to mother, the Court of Appeal found the agency properly identified service providers to address mother's mental deficits & cognitive delays. However, the agency relied exclusively on these agencies despite long delays in actually providing services. For individual therapy, mother was placed on a waiting list of 6 to 12 months & did not begin therapy until 10 months after the children were removed. Mother never received any services for anger management, in-home counseling or parenting support. Also, she was not given services for independent living skills & she did not receive any help with housing. Given these delays & omissions, the Court of Appeal held mother had not received reasonable reunification services. The remedy was to grant the petition & order the agency to provide mother with an additional period of reunification so long as it did not extend beyond 24 months.

J.H. v. Superior Court (2018) 20 Cal.App.5th 530 [2d Dist., Div. 6] (San Luis Obispo) **Father filed a petition for extraordinary writ challenging the juvenile court's termination of reunification services based on the inability to cross-examine the social worker who wrote the agency's report & on *People v. Sanchez* (2016) 63 Cal.4th 665 but the writ was denied since the lack of cross examination was not a violation of due process**. *Sanchez* clarifies the test for admitting expert opinion testimony. Daughters R.H. & N.H. were removed because their stepmother abused them. Father was granted 12 months of reunification services during which he seemed to not benefit in addressing his anger or domestic violence. Father was notified in advance that the preparer of the report, social worker Talbert, would not be available at trial because she no longer worked for the agency but her supervisor would be available. Finding the supervisor authored portions of the report, spoke with father's therapists, reviewed visitation logs, discussed the case with Talbert, & personally observed father's visits, the appellate court held father's due process rights were not violated. The fact father was notified Talbert would not be available & he extensively cross-examined the supervisor but did not subpoena Talbert weighed against finding his right to due process was violated. Holding the Sixth Amendment & due process confrontation clause rights are not coextensive because criminal defendants and parents in dependency proceedings are not similar situated, the Court of Appeal found *Sanchez*'s holding re: the Sixth Amendment is inapplicable in dependency cases & denied father’s writ.

Standing

In re Kayla W. (2017) 16 Cal.App.5th 409 [2d Dist., Div. 3] (Los Angeles)

The Court of Appeal found that where mother voluntarily placed Kayla with her grandparents in a probate guardianship, mother nevertheless remains a non-custodial parent in a dependency case, has standing & is entitled to be present & to appointed legal counsel. When Kayla was eight months old her parents petitioned the probate court to appoint the maternal grandmother & her husband as guardians & that petition was granted. Four months later, a dependency petition was filed after a domestic violence incident between the grandparents. Initially, Kayla was placed with her grandmother after the criminal court issued a two-year protective order against grandfather. A month later, grandfather was found to be living with grandmother & Kayla & Kayla was removed. At the disposition hearing, the trial court held mother did not have standing to be at the hearing & denied mother's request for an attorney or visitation. Mother filed a petition for writ of mandate challenging the termination of reunification services & the setting of the section 366.26 hearing. The Court of Appeal held mother remains a non-custodial parent entitled to be at the hearing, appointed counsel & visitation. The appellate court further found mother was prejudiced by the trial court's actions because the Court of Appeal was unable to evaluate the likelihood that mother would have been successful in seeking custody of, or at least visitation with, Kayla. Consequently, the court reversed the disposition orders and remanded the case for a new hearing at which mother would be permitted to make requests for custody & visitation with the assistance of appointed counsel. [P. Dikes]

SECTION 366.26

Beneficial-Relationship Exception

In re C.A. (2018) 234 Cal.Rptr.3d 319 [4th Dist., Div. 1] (San Diego)

In affirming the denial of the application of the beneficial-relationship exception, the appellate court held mother did not visit regularly, she did not share a parent-child bond with C.A., & there was no indication C.A. would be negatively impacted by the termination of mother's parental rights. Mother & the presumed father appealed. The case began because C.A. was born with methamphetamine in her system. As for the beneficial-relationship challenge, the trial court held the exception did not apply because C.A. was removed from mother at birth, had spent most of her young life in foster care, & mother's visits were no longer regular or consistent by the time of the hearing. The Court of Appeal affirmed because, although mother had visited regularly initially, she had waned after her relapse. In addition, mother was inappropriate during video visitations & this, along with a lack of consistent visits, exposed a lack of parent-child relationship. Based on these findings, the appellate court affirmed the termination of parental rights. [E. Min - mother; P. Swiller - presumed father] [See also under the ICWA.]

Sibling Exception

In re Elizabeth M. (2018) 19 Cal.App.5th 768 [2d Dist., Div. 7] (Los Angeles)

The Court of Appeal affirmed the trial court's finding the sibling exception did not apply where the siblings had been separated for more than a year & little was presented to show a sibling bond. The case began because of allegations of physical abuse of the oldest child, who was then two years old, & mother observed the abuse & failed to protect her son. The children were returned to their mother for nine months but then they were removed again because of physical abuse by mother. After the children were removed a second time, the boys & the girls were placed in two separate foster homes. At the time of the section 366.26 hearing, the girls had been in an adoptive placement for more than a year. The boys were still looking for an adoptive placement & cousins in Texas were being assessed. Initially, the trial court denied father's request to continue the hearing for all the children to have the same section 366.26 hearing. The appellate court held that the trial court's focus on the girls' need for stability in denying a continuance was not an abuse of discretion. As for the sibling exception, the Court of Appeal found the two sets of siblings had not lived together for more than 16 months & little evidence was presented to compel a finding that the girls had a significant sibling bond with their brothers. The denial of the sibling exception was affirmed even though the ICWA findings were conditionally reversed. [J. Moran] [See also under the ICWA.]

Relative Placement

In re M.H. (2018) 21 Cal.App.5th 1296 [1st Dist., Div. 3] (Alameda)

Finding that neither the relative placement preference nor the caretaker preference applied when the juvenile court considered placement of one-year-old M.H. at the section 366.26 hearing, the Court of Appeal affirmed the trial court's orders. M.H. was removed after testing positive for methamphetamine & cocaine at birth & was placed in a foster home. Two months later, an Interstate Compact on Placement of Children (ICPC) evaluation was started for his maternal great aunt, E.W., in Minnesota. Mother was granted reunification services but these were terminated eight months later. Ten months after the case began, the ICPC for the great aunt was approved. The agency recommended M.H. be moved to his relative's home for adoption. Minor's counsel urged the court to leave M.H. placed with his de facto/foster parents because he was bonded to them & they were the only family he has known. The juvenile court weighed the two placements & rejected the proposed change in placement. The juvenile court found the relative preference in section 361.3 does not include a great aunt, but relied on section 366.26, subdivision (k), to find it was in M.H.'s best interest to remain in his current placement. The agency & the great aunt appealed. The Court of Appeal agreed the relative placement statute did not apply because great aunt's are not included & because no new placement was required. Further, the caretaker placement preference in subdivision (k) was not applicable because adoption was not yet M.H.'s permanent plan & he had not been freed for adoption. Finally, finding the burden of proof is on the moving

party on a motion for a change of placement but the trial court was faced with two good options. Given this, the appellate court found M.H. was thriving in his current placement & was successfully bonded to his de facto parents so there was no evidence the trial court abused its discretion in concluding his continued placement in his foster home was in his best interest & affirmed. [L. Serobian]

NON-MINOR DEPENDENT

In re H.C. (2017) 17 Cal.App.5th 1261 [4th Dist., Div. 1] (San Diego)

Nonminor dependent H.C. argued, & the Court of Appeal agreed, that H.C.'s marriage did not require termination of her dependency case. The agency & trial court relied on an All-County Letter published by the California Department of Social Services which described the policy that nonminor dependents who are married, in the military, or are incarcerated, are not eligible for extended foster care. H.C. appealed. The appellate court found nothing in the federal statute which is the basis for the California statute precluded an otherwise eligible youth who is married or in the military from participating in extended foster care. In addition, the appellate court held the responsibilities of marriage may facilitate the nonminor dependent's transition to independence & allowing a nonminor dependent to be married likely furthers the purpose of the program which is to improve the outcomes for former foster children. Consequently, the trial court's findings were reversed. [J. Moran]

POST-PERMANENCY HEARING

Services to a Child

In re Christian K. (2018) 21 Cal.App.5th 620 [1st Dist., Div. 1] (Alameda)

Where the trial court focused on whether the orders would promote Christian's stability & facilitate & expedite his adoption, the Court of Appeal affirmed the order approving an overseas visit for Christian with his paternal grandparents even if it meant less services for Christian. The case began in 2014 when Christian was 4 years old & his parents were struggling with drug abuse. Christian's paternal grandmother lives in Denmark & expressed an interest in adopting Christian. The agency was concerned about Christian's move to Denmark since he still had strong ties with his mother & he said he did not want to move to Denmark. In preparation, the trial court ordered therapy for Christian to allow him to process this change. For a variety of reasons, Christian had few therapy sessions. At the post-permanency hearing, Christian's attorney argued he had not received reasonable services because of the limited therapy but the trial court disagreed finding uncertainty was "worse for him [Christian] than anything else." The trial court found Christian had received reasonable services & ordered a trial visit in Denmark. Christian appealed. Finding the trial court properly assessed whether Christian should be moved, the appellate court found the court considered & made a determination about Christian's services & it was authorized to order a trip to Denmark to protect the stability of Christian & to expedite the permanent plan. [A. Tobin]

Standing

In re E.R. (2017) 18 Cal.App.5th 891 [1st Dist., Div. 4] (Mendocino)

Finding the maternal uncle no longer has Indian custodian status, & no other legal status he could qualify for granted him standing, the Court of Appeal dismissed the uncle's appeal challenging orders at the permanent plan hearing. In a prior appeal (*In re E.R.* (2016) 244 Cal.App.4th 866), the appellate court found mother's revocation of maternal uncle's Indian custodian status shortly after the children were detained meant he no longer qualified as a preferred placement, & found there was compelling evidence to affirm the trial court's refusal to place the children with their uncle given the children's special needs and the uncle's own cognitive deficits. While the earlier appeal was pending, the uncle appealed the orders continuing the children in long-term foster care. Here, the appellate court reviewed a variety of legal designations for the uncle for purposes of standing. The uncle was no longer the Indian custodian. If he were designated a de facto parent, he would not acquire standing to appeal from a juvenile court order unless it involved something the de facto parent is entitled to which was not the case here. Also, section 366.3, subdivision (e), designates a person as "important to the child" but this does not confer standing to appeal with respect to the minors' permanent plans. Consequently, the appeal was dismissed for lack of standing. [S. Gorman]