MINING RECENT DEPENDENCY CASES FOR ISSUES—SPOTTING THE GOLD 2021 UPDATE

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Reviewing the published case law from 2021, this article hopes to provide an updated highlight of the various evolving issues in juvenile dependency law from the prior year.

I. Notice/Due Process

A. When Notice Issues are Raised by Way of a Welfare and Institutions Code[1] Section 388 Petition, a Best Interest Showing is Not Required.

Parents are entitled to notice of juvenile dependency proceedings.[2] Generally, when bringing a section 388 petition a parent is required to show that revoking the previous order would be in the best interests of the child.[3] However, in *In re R.A.* (2021) 61 Cal.App.5th 826 (*R.A.*)**,** the First Appellate District clarified that "**[w]hen a section 388 petition is based on lack of notice, a separate showing of best interest is not required."** This is because the jurisdictional defect caused by the lack of notice voids a judgment. It is always in the best interests of a child to have a dependency adjudication based upon all material facts and circumstances and the participation of all interested parties entitled to notice. (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 490-491.)

In *R.A.*, Father's whereabouts remained unknown for over a year, despite being easy to locate in a California prison. Shortly after Father was located, he filed a section 388 petition seeking to set aside all prior findings and orders because he was not sufficiently notified of the proceedings. The court denied his section 388 petition because he had not met the "best interests" prong of the section 388 motion. The First Appellate District reversed, noting that "[w]e cannot accept the idea that an agency may completely ignore its duty to search for a missing parent and then, should the missing parent show up, rely on the best interest of the child to preclude that parent from participating in the dependency case." (*R.A.* at p. 839.)

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[1] All references are to the Welfare and Institutions Code unless otherwise noted.

[2] Due process requires that a parent is entitled to notice that is reasonably calculated to inform him or her of the dependency proceedings and afford him an opportunity to object. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188.) The Child Welfare Agency (Agency) must act with reasonable diligence to locate a missing parent by way of a thorough, systematic investigation conducted in good faith. (*Ibid.*) A parent may raise the Agency's failure to provide him with adequate notice through a petition under Welfare and Institutions Code[2] section 388. (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 483.)

[3] When bringing a section 388 petition, generally a parent must demonstrate: (1) a genuine change of circumstances or new evidence, and (2) that revoking the previous order would be in the best interests of the child. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

B. The Juvenile Court's Dismissal of Jurisdiction with an "Approval Packet" and Non-Appearance Review Hearing Denied Parent of Due Process.

When a child is declared a dependent but remains in the custody of one of their parents, the court is required to conduct a noticed review hearing to determine if continued supervision is necessary.[4] If jurisdiction is to be terminated, the noncustodial parent is entitled to an evidentiary hearing regarding custody and visitation.[5]

In *In re R.F.* (2021) 71 Cal.App.5th 459, the Fourth Appellate District found that the juvenile court violated Father's right to notice and an opportunity to be heard when it authorized the Child Welfare Agency (hereinafter "Agency") to request dismissal of dependency jurisdiction by way of the local court "approval packet" procedure and a non-appearance review hearing. The juvenile court's attempt at an expedited procedure violated Father's rights because it allowed for email notice when there was no evidence in the record that Father had consented to receive notice by email. Further, Father was denied an opportunity to be heard on the issue of the exit orders. The exit orders required that visitation be supervised by a paid professional monitor at Father's expense, whereas Father had previously been able to have his visitation supervised by a qualifying relative. This was a meaningful change to the visitation orders and there was no accompanying report from the Agency recommending why the change was necessary. The error was therefore not harmless because if Father had been given the opportunity to be heard on this issue, it was reasonably probable that the court would not have mandated a paid professional visitation monitor. **Father was entitled to notice and an opportunity to be heard before the court dismissed the dependency proceedings and imposed modified visitation orders.** (*In re R.F.* (2021) 71 Cal.App.5th 459, 471.)

C. It is a Denial of Due Process when the Juvenile Court Amends the Petition to Conform to Proof in a Way that Materially Varies from the Original Petition.

Following the jurisdiction hearing, the juvenile court may amend a petition to conform to the evidence presented at that hearing, so long as the gravamen of the petition remains the same.[6]

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[4] When a child is declared a dependent but not removed from both of her parents, section 364 governs. Section 364 states that the court shall advise the parties of all hearings and of their rights to be present and be represented by counsel. (§ 364, subd. (a).) At least ten calendar days before a review hearing, the Agency is required to file a report describing the services offered to the family and the progress made by the family in eliminating the conditions or factors requiring court supervision as well as a recommendation regarding the necessity of continued supervision. (§ 364, subd. (b).) After conducting the review hearing and considering any evidence presented by the parties, the juvenile court shall determine, based on the totality of the evidence, whether continued supervision is necessary. (§ 364, subd. (c).)

[5] A noncustodial parent is entitled to an evidentiary hearing regarding custody and visitation issues ancillary to the termination of jurisdiction. (*In re Michael W.* (1997) 54 Cal.App.4th 190, 192.)

[6] A juvenile court may amend a petition to conform to the evidence received at the jurisdiction hearing so long as the amendments do not mislead a party to his or her prejudice. (Code Civ. Proc., §§

In re I.S. (2021) 67 Cal.App.5th 918 (*I.S.*) gives us an example of a juvenile court amending jurisdictional allegations such that they materially varied from the original petition and thus denied a parent due process. In *I.S.*, the minor was removed from Mother due to sexual abuse in the home. The section 300 petition included subdivision (b) and (d) allegations, alleging that Mother knew about the abuse but said that the minor was making it up. Following the jurisdictional hearing, the court amended the petition to "conform to proof" by including allegations that Mother did not take sufficient steps to investigate the circumstances that might have led to the discovery of the sexual abuse, permitted other household members to ostracize the minor, pressured the minor into allowing her abuser to return to the home, continued to live in the home with the abuser, and caused the minor to feel unsafe and unsupported.

The First Appellate District reversed the jurisdictional findings, holding that the juvenile court's additional allegations sought to establish jurisdiction over the minor under a different legal theory than the original allegations. The amended allegations sought to establish jurisdiction based on Mother's infliction of emotional abuse, whereas the original petition alleged a failure to protect. Mother did not have notice that evidence would be presented concerning this alternative theory. Further, the finding that Mother did not take sufficient steps to investigate the abuse is also a different theory, alleging a lack of reasonable investigation rather than actual knowledge. Mother would have possibly prepared her defense differently had she been on notice that the allegations were based on a lack of diligence.

D. Parent's Right to Due Process was Violated When the Juvenile Court Appointed a Guardian Ad Litem Without Finding the Parent Lacked Capacity.

When a parent lacks the capacity to understand the nature of the proceedings or to assist their counsel in preparing the case, a guardian ad litem should be appointed.[7]

In *In re Samuel A.* (2021) 69 Cal.App.5th 67 (*Samuel A.*), the Second Appellate District found that the juvenile court's guardian ad litem finding was not supported by substantial evidence. *Samuel A.* involved a mother who had incredibly difficult behaviors. After months of delays caused by Mother's obstructionist behavior, the juvenile court appointed a guardian ad litem, commenting that it believed that Mother did understand the proceedings and her disruptive behavior did not arise from a mental health incapacity, but rather, Mother's conduct was a

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469 – 470; Welf. & Inst. Code, § 348.) Allowable amendments require that the gravamen of the petition remain the same. (*In re I.S.* (2021) 67 Cal.App.5th 918, 928.) The juvenile court exceeds its authority when it includes amendments to the allegations which change the grounds for establishing jurisdiction or seek to establish jurisdiction under a different legal theory or based on a new set of facts. (*In re G.B.* (2018) 28 Cal.App.5th 475, 486.)

[7] A parent who is mentally incompetent must appear by a guardian ad litem in dependency proceedings. (*In re James F.* (2008) 42 Cal.App.4th 901, 910 (*James F.*)) The test for mental competence is whether the parent has the capacity to understand the nature or consequences of the proceeding and to assist counsel in preparing the case. (Pen. Code § 1367.) Before a guardian ad litem can be appointed for a nonconsenting parent, the parent must be given notice and an opportunity to be heard. (*James F.* at p. 904.) The juvenile court should make an inquiry sufficient to satisfy itself whether the parent is competent. (*James F.* at 910-911.) If a guardian ad litem is appointed without the parent's consent, the record must contain substantial evidence of the parent's incompetence. (*Ibid.*)

"knowing and deliberate effort to obstruct proceedings she believed were not going to be favorable to her." (*Samuel A.* at p. 77.) The Second Appellate District reversed the guardian ad litem finding and all subsequent findings, pointing out that "a guardian ad litem is not a tool to restrain a problematic parent, even one who unreasonably interferes with the orderly proceedings of the court or who persistently acts against her own interests or those of her child." (*Samuel A.* at p. 70.) **Because there was no finding or evidence that Mother lacked the capacity to either understand the nature of the proceedings or to assist counsel in a rational manner, appointment of a guardian ad litem was inappropriate**. A parent's due process right to communicate directly with counsel in proceedings that could culminate in the termination of her parental rights is fundamental. (*In re Sara D.* (2001) 87 Cal.App.4th 661, 669.)

II. Jurisdiction

A. Is Exposure to Domestic Violence Sufficient for a Finding of Serious Physical Harm Under Section 300, Subdivision (a)?

Section 300, subdivision (a) applies in cases of serious physical harm inflicted nonaccidentally by a child's parent or guardian.[8] "Nonaccidental" generally means a parent or guardian acted intentionally or willfully.[9] Competing cases were published this year regarding whether parents' domestic violence meets the nonaccidental requirement of subdivision (a).

In *In re Nathan E.* (2021) 61 Cal.App.5th 114 (*Nathan E.*), the Second Appellate District, Division One found that the application of subdivision (a) is appropriate when a child suffers, or is at substantial risk of suffering, harm due to the exposure to domestic violence. The *Nathan E.* court relied on *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599, which states that: "Domestic violence is nonaccidental." The *Nathan E.* opinion noted that although many cases based on exposure to domestic violence are filed under subdivision (b), subdivision (a) may also apply. Based on the history of domestic violence between the parents and the presence of one or more of the children during the parents' violent altercations, sufficient evidence existed to sustain subdivision (a) allegations.

In re Cole L. (2021) 70 Cal.App.5th 591 (*Cole L.)*, published eight months later by the Second Appellate District, Division Seven, found that the parents' domestic violence was insufficient for a subdivision (a) finding. *Cole L.* found that **the "unintended injury to a bystander child that results from an intentional act directed at another . . . does not satisfy [the nonaccidental] statutory requirement.** (*Cole L.* at p. 603.) This accidental injury could be the basis for subdivision (b) or (c) jurisdiction, but not subdivision (a) jurisdiction.

In *Cole L.*, the minors were asleep in another room when the domestic violence occurred, which included yelling and shoving. The *Cole L.* court acknowledged that under certain

[8] Section 300, subdivision (a) creates jurisdiction over a child when there is "a substantial risk that the child will suffer serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian."

[9] *In re R.T.* (2017) 3 Cal.App.5th 622, 629.

circumstances domestic violence can support a subdivision (a) finding, "[f]or example, if a father strikes an infant's mother while she is holding the child or an older child intervenes, during a fight to protect her mother from her father's abuse, the risk of harm to the child may be properly viewed as nonaccidental." (*Cole L.* at p. 603.)

B. Parent's Criminal Record Alone is Insufficient to Sustain Section 300, Subdivision (b) Allegations.

When section 300, subdivision (b) allegations are based on a parent's past conduct, the Agency must show a nexus to a current risk of harm.[10]

In *In re J.N.* (2021) 62 Cal.App.5th 767 (*J.N.*), the Second Appellate District reversed jurisdiction orders that were based solely on Father's violent criminal history. Father had convictions for criminal threats, assault with a deadly weapon, exhibiting a deadly weapon, and arson and was serving an eight-year prison sentence. While there was a reasonable inference that Father would commit future crimes, there was no evidence that the minor would be harmed by this. While violent crime, on an abstract level, is incompatible with child safety, such generalities are insufficient to prove an "identified, specific hazard in the child's environment" that poses a substantial risk of serious physical harm to the minor. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) **A parent's violent criminal record, without more, does not necessarily establish that a parent has a violent disposition sufficient to establish the requisite risk of physical harm to a particular child to support a jurisdictional allegation.** (*J.N.* at p. 776.) Evidence of domestic violence might, under certain circumstances, support such a nexus. (*Ibid.*)

C. Minor Displaying Sexualized Behavior After Having Witnessed Parent Engaged in Sexual Activity Sufficient for Jurisdiction Under Section 300, Subdivision (b) but not Subdivision (d).

Due to the seriousness of section 300, subdivision (d) allegations, its application is limited to those situations in which a child has suffered sexual abuse as defined by Penal Code section 11165.1.[11]

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[10] Under section 300, subdivision (b), the court can assume jurisdiction if it finds there is a substantial risk the child will suffer serious physical harm as a result of the parent's failure or inability to provide regular care. In order to sustain a petition under section 300, a significant risk to the child must exist at the time of the jurisdiction hearing. (*In re David M.* (2005) 134 Cal.App.4th 822, 829.) The Agency has the burden of showing specifically how the minor has been or will be harmed. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) Evidence of a parent's past conduct may be probative of current risk of harm, but the Agency must establish a nexus. (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146; *In re Roger S.* (2018) 31 Cal.App.5th 572, 583.)

[11] Section 300, subdivision (d) requires a showing that a child is suffering or at risk of suffering sexual abuse because of a parent or guardian's conduct or failure to protect. (*In re I.J.* (2013) 56 Cal.4th 766; Welf. & Inst. Code § 300, subd. (d).) Sexual abuse is described in Penal Code section 11165.1, which enumerates the various offenses that qualify as sexual assault or exploitation. Allegations under subdivision (d) are assessed under a higher standard because they carry significant consequences. A true finding under subdivision (d) has consequences beyond jurisdiction, such as a presumption in future

In *In re L.O.* (2021) 67 Cal.App.5th 227 (*L.O.*), the Fourth Appellate District found that a child's sexualized behavior after having possibly witnessed a parent engaging in sexual activity was not sufficient to support subdivision (d) allegations. **Exposing a minor to sexualized behavior would only fall within subdivision (d) if the conduct was motivated by an unnatural or abnormal sexual interest in the minor.** In *L.O.*, the court found there was no evidence that the parent's lapse was sexually motivated, rather than accidental. Thus, it does not fall into any enumerated sexual abuse category and is ineligible to support a subdivision (d) finding. The court did note that jurisdiction could have been established under subdivision (b), but the Agency did not allege it.

III. Disposition

A. An Isolated Incident of Domestic Violence was Insufficient to Support Removal Where There is not Substantial Evidence that the Domestic Violence is Likely to Continue.

Despite a finding that the court has jurisdiction, removal at disposition may not be warranted due to the heightened standard of proof[12] or changes in circumstances during the passage of time.[13]

In *In re I.R.* (2021) 61 Cal.App.5th 510, the Second Appellate District found that there was insufficient evidence to justify removing a minor under section 361, subdivision (c)(1). Jurisdiction over the minor was based on a single incident of domestic violence between the parents, where Father slapped Mother. By disposition, Father no longer lived or communicated with Mother and did not display violent behavior outside of the relationship with Mother. The Second Appellate District found that the sole source of potential danger to the minor while in Father's care, that was supported in the record, was his history of domestic violence with Mother, but **the record did not contain substantial evidence that the domestic violence between**

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proceedings that a child is at substantial risk for abuse or neglect. (§ 355, subd. (d).) The consequences of being wrong are so great that "it is hard to imagine an area of the law where there is a greater need for reliable findings by the trier of fact." (*Blanca P. v Superior Court* (1996) 45 Cal.App.4th 1738, 1754.)

[12] Even though jurisdictional findings may be based on substantial evidence, dispositional findings have a different focus and a heightened burden of proof—clear and convincing evidence. (§ 361, subd. (c)(1); *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995-996, 1011.) This heightened standard is premised on the notion that even after parents have been found to have abused or neglected their children, "keeping children with their parents while proceedings are pending, whenever safely possible, serves not only to protect parents' rights but also children's and society's best interest. (*In re D.P.* (2020) 44 Cal.App.5th 1058, 1066-1067.)

[13] Even though children may be dependents of the juvenile court, they shall not be removed from their parents unless there is clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being and there are no "reasonable means" by which the child can be protected without removal. (§ 361, subd. (c)(1).) When considering if the child will be in substantial danger if permitted to remain in the parent's custody, the court must consider not only the parent's past conduct, but also current circumstances and the parent's response to the conditions that gave rise to juvenile court intervention. (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 451-452.)

Mother and Father was likely to continue. There had been no contact between Father and Mother since the minor's detention and neither Mother nor Father expressed an intention to reconcile their relationship and there was no demonstrated unwillingness to stay away from each other.

B. Leaving Minors with Domestic Abuser is not Substantial Evidence of Detriment to Justify Removal from a Noncustodial Parent.

When a child is removed from a custodial parent, the juvenile court must place the child with a noncustodial parent unless it finds by clear and convincing evidence that such placement would be detrimental to the child.[14] Failure to keep in contact with a child is not sufficient to support a finding of detriment.[15]

In *In re Solomon B.* (2021) 71 Cal.App.5th 69, Mother fled a violent relationship with Father, leaving her four and five-year-old sons in his care. Mother did not believe Father's abusive conduct towards her meant that he would also abuse their children. A year later, the minors were removed from Father due to his drug use and neglect of the minors. Mother came forward and requested placement of the minors. The court denied her request for placement, finding she had abandoned the minors.

The Second Appellate District disagreed, finding that there was insufficient evidence to support a detriment finding. Mother did not abandon the minors because she had come forward as soon as she learned there was Agency involvement and communicated with the minors when they visited with maternal grandmother. Further, Mother had no reason to believe Father would abuse the minors because his abusive conduct towards her did not mean that he would also be physically or emotionally abusive to the minors.

IV. Status Review Hearings

A. Is the Court Required to Set a Section 366.26 Hearing if the Minor Cannot be Returned at the 18-Month Hearing, Even With a No Reasonable Services Finding?

At each review hearing, the juvenile court must make a finding as to whether the Agency has met their duty to offer reasonable reunification services.[16] With a few enumerated exceptions, the

[14] § 361.2, subd. (a).

[15] *In re Adam H.* (2019) 43 Cal.App.5th 27, 33.

[16] At each status review hearing, the court must find that reasonable services were offered. (§ 366.22, subd. (a).) To make such a finding, the record should show that the Agency identified the problems leading to their involvement, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) Reunification services need not be perfect and services are not unreasonable merely because more services could have been provided. (*Elijah R. v Superior Court* (1998) 66 Cal. App.4th 965, 969; *In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) However, the Agency must make a good faith effort to

last possible review hearing before the court establishes a permanent plan for the child is the 18-month permanency review hearing.[17]

In *Michael G. v. Superior Court* (2021) 69 Cal.App.5th 1133, the Fourth Appellate District asserted that reunification services should be terminated at the 18-month review hearing even if the court makes a no reasonable services finding at that hearing. **Because the parent did not fall into one of the three categories put forth by section 366.26, subdivision (b), the court was obligated to terminate services and set the section 366.26 hearing.**

Update: On January 19, 2022 the Supreme Court has granted review in this case. See Michael G. v. Superior Court, (S271809) This case presents the following issue: Are juvenile courts required to extend reunification efforts beyond the 18-month review when families have been denied adequate reunification services in the preceding review period?

V. 366.26 Hearing

A. Exceptions to the Termination of Parental Rights: Parental-Benefit Exception.

The parental-benefit exception provides parents with an exception to the general rule that the court should choose adoption as the permanent plan for a dependent child at the section 366.26 hearing.[18]

This year, the California Supreme Court decided *In re Caden C.* (2021) 11 Cal.5th 614 (*Caden C.*), a seminal case regarding the parental-benefit exception. In *Caden C.*, the Supreme Court clarified that the parental-benefit exception has three components: (1) whether the parent

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provide services tailored to the unique needs of each family. (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306.)

[17] In most instances, the last possible review hearing before the court establishes a permanent plan for the child is the 18-month permanency review hearing. (§ 366.22, subd. (a)(3).) There are three exceptions to this rule: (1) parent is making good progress in substance abuse treatment, (2) parent was recently discharged from incarceration or institutionalization, or (3) parent was a minor or nonminor dependent at the initial hearing. (*Earl L. v. Superior Court* (2011) 199 Cal.4th 1490; § 366.22, subd. (b).)

[18] At a section 366.26 hearing, the court may select one of three alternative permanency plans for the dependent child—adoption, guardianship or long-term foster care. At this stage of the dependency proceedings, adoption is preferred because it ensures permanency and stability for the minors. (*In re A.S.* (2018) 28 Cal.App.5th 131, 152.) Thus, as a general rule, at a section 366.26 hearing, if the trial court finds that the child is adoptable, it must select adoption as the permanent plan and terminate parental rights. (§ 366.26, subds. (b)(1) & (c)(1).) The parental-benefit exception is an exception to the general rule that the court must choose adoption where possible. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) Under this exception, the juvenile court will not terminate parental rights if it finds a compelling reason for determining termination would be detrimental to the child because the parent/s have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. (Welf. & Inst. Code, § 366.26, subd. (C)(1)(B)(i).)

has maintained regular visitation and contact with the child, (2) whether the child has a substantial and positive emotional attachment to the parent, such that the child would benefit from continuing the relationship, and (3) whether terminating that relationship would be detrimental to the child when balanced against the benefit of a permanent adoptive home.

1. Standard of Review.

Caden C. clarified that a hybrid standard of review should be applied to the parental-benefit exception. The substantial evidence standard of review is applied to the first two elements, whether there has been regular visitation and whether there is a beneficial relationship. (*Caden C.* at p. 639.) The abuse of discretion standard is applied to the third element, whether termination would be detrimental to the child. (*Ibid.*) The Supreme Court noted that there is likely no practical difference in the application of the two standards. (*Id.* at p. 641.)

2. Beneficial Relationship.

To meet the second component of the exception, the beneficial relationship component, "[t]he parent must show that the child has a substantial, positive, emotional attachment to the parent—the kind of attachment implying that the child would benefit from continuing the relationship." (*Caden C.* at p. 636.) There are a "slew of factors" which illustrate this relationship, such as "'[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs.'" (*Ibid.*) The inquiry is focused on the child, though courts must "remain mindful that rarely do '[p]arent-child relationships' conform to an entirely consistent pattern." (*Ibid.*)

Interpretation of *Caden C.* has led to some confusion about the use of the term "parental role." In *In re D.M.* (2021) 71 Cal.App.5th 261 (*D.M.*), decided following the *Caden C.* decision, the Second Appellate District found that the juvenile court erred when it focused on whether Father occupied a "parental role" in his children's lives. The court equated a parental role with attendance at medical appointments and understanding the children's medical needs. "*Caden C.* made clear the beneficial relationship exception is not focused on a parent's ability to care for a child or some narrow view of what a parent-child relationship should look like." (*D.M.* at p. 270.) Additionally, *In re J.D.* (2021) 70 Cal.App.5th 833 (*J.D.*) the First Appellate District found that the juvenile court erred when it found that Mother's relationship did not amount to a "parental bond" because this finding could have encompassed factors which were not relevant under *Caden C.* In *J.D* the court clarified that a parent does not have to prove they have a "primary bond" with their child and that the parent's relationship should not be evaluated in the context of the relationship that the child may have with their primary caretaker. (*J.D.* at p. 859.)

In *In re L.A.-O* (2021) 73 Cal.App.5th 197 (*L.A.-O*), the Fourth Appellate District similarly remanded for a new section 366.26 hearing to consider the parental-benefit exception in light of *Caden C.* The court noted that the words "parental role" are ambiguous and can have several different meanings. (*L.A.-O.* at p. 210.) Some of the meanings encompass factors which may still be considered under *Caden C.*, while others may not. The trial court's ruling that the

parents "ha[d] not acted in a parental role in a long time" did not provide enough information to determine if the court had relied on improper factors. (*Id.* at p. 211.)

3. Detriment to the Child.

The third component of the parental-benefit exception analysis, whether terminating the relationship would be detrimental to the child, requires balancing whether "the benefit of a placement in a new, adoptive home outweighs 'the harm [the child] would experience from the loss of [a] significant, positive, emotional relationship with [the parent].'" (*Caden C.* at p. 633.) The court must decide "whether the harm of severing the relationship outweighs 'the security and the sense of belonging a new family would confer.'" (*Ibid.,* citing *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The *Caden C.* court noted that "understanding the harm associated with severing the relationship is a subtle enterprise" and that balancing the positive and negative aspects of the relationship "can be a daunting prospect for trial courts." (*Caden C.* at pp. 634, 635.)

Because terminating parental rights eliminates any legal basis for the parent or child to maintain the relationship, courts must assume that terminating parental rights terminates the relationship. (*Ibid.*) The court is not to compare the parent's attributes as a custodial caregiver relative to those of any potential adoptive parent. (*Caden C.* at p. 634.) The hearing is not a contest of who would be the better custodial caregiver as nothing happens at the section 366.26 hearing which would allow the child to return to live with a parent. (*Ibid.*) Even where it may never make sense to permit the child to live with the parent, termination may be detrimental. (*Ibid.*)

While *J.D.* reversed based on the court's reliance on improper factors regarding the second element of the exception, it also addressed the third element. *J.D.* noted that "[c]ourts must determine 'how the child would be affected by losing the parental relationship – in effect, what life would be like for the child in a new adoptive home *without the parent in the child's life*.'" (*J.D.* at p. 866.)

4. Parents' Failure to Overcome the Issues that led to Removal does Not Create a Categorical Bar to the Exception.

Caden C. further held that a parent's inability to overcome the issues that led to the dependency is not a categorical bar to applying the parental-benefit exception. The Supreme Court rejected the "paradoxical proposition, without any basis in the statute or its history, that the exception can only apply when the parent has made sufficient progress in addressing the problems that led to dependency." (*Caden C.* at p. 637.) However, the issues that led to dependency can be relevant to applying the exception. While a parent need not show that they are actively involved in complying substantially with their case plan, their struggles may create a negative effect on their interactions with their child/ren and affect the beneficial nature of their relationship. (*Caden C.* at p. 639.)

In *In re B.D.* (2021) 66 Cal.App.5th 1219 (*B.D.*), the Fourth Appellate District reversed the termination of parental rights where the juvenile court "relied heavily, if not exclusively, on

the fact that the parents had not completed their reunification plans and were unable to care for the children based on their long-term and continued substance abuse." (*B.D.* at p. 1228.)

VI. Placement Issues

A. A Section 387 Petition is Not Required to Terminate a Dependency Guardianship But is Required to Remove a Minor From Placement With a Relative.

When guardianship has been ordered at the section 366.26 hearing, jurisdiction remains with the juvenile court.[19] California Rules of Court, rule 5.740(d) provides that a petition pursuant to section 388 must be filed in the juvenile court to terminate a guardianship. However, *In re Jessica C.* (2007) 151 Cal.App.4th 474 (*Jessica C.*) held that the appropriate procedural mechanism to terminate a guardianship is by way of a section 387 petition, when termination will result in the minor's placement in foster care. A section 387 petition requires procedural prerequisites before removing a minor from their placement and removal findings under section 361, subdivision (c).[20]

In *In re N.B.* (2021) 67 Cal.App.5th 1139 (*N.B.*), the First Appellate District disagreed with *Jessica C.*, holding that a section 387 petition was not required to terminate a guardianship with a relative. Rather, a section 388 petition is the proper vehicle. The *N.B.* court mentioned, but did not address the language from *Jessica C.* which states that "[i]n contrast to section 388, section 387 provides a more detailed procedure[.]" (*Jessica C.* at p. 480.) Section 387 requires bifurcated proceedings in which the juvenile court "must conduct a contested hearing to resolve factual disputes and determine whether the allegations of the supplemental petition are true. (*Jessica C.* at p. 481.)

In *In re Brianna S.* (2021) 60 Cal.App.5th 303, the Second Appellate District held that when a minor is removed from a placement with a relative, a section 387 petition is required. If, in fact, a section 387 petition requires a "more detailed procedure" which provides more protection to relatives than the a section 388 petition, then a relative has less protection in a

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[19] At the section 366.26 hearing, the juvenile court may appoint a legal guardian for a minor and issue letters of guardianship. (§ 366.26, subd. (b)(3).) Any minor for whom such a guardianship has been established remains within the jurisdiction of the juvenile court. (§ 366.4, subd. (a).)

[20] Section 387 requires three procedural prerequisites before removing a minor from their placement: (1) a petition which sets forth "a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the . . . protection of the child or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in section 361.3," (2) a noticed hearing within 30 days of the filing of the supplemental petition, and (3) the court must decide whether the allegations in the supplemental petition are true and whether it is appropriate to remove the child from their placement. (§ 387.) If the section 387 petition seeks to remove the child from a guardian, the court must make removal findings under section 361, subdivision (c), which requires clear and convincing evidence of substantial danger to the minor, no reasonable means to protect the minor, and that reasonable efforts have been made to avoid removal.

guardianship ordered at the permanency hearing than when the minor is in their care as a mere placement.

VII. Indian Child Welfare Act ("ICWA")

A. Evolving Definition of Adequate Further Inquiry

If an initial ICWA inquiry[21] gives the juvenile court or the Agency a "reason to believe" that an Indian child is involved, then further inquiry must be conducted.[22] This further inquiry includes, but is not limited to, interviewing parents and extended family members and notifying the Bureau of Indian Affairs and any tribes that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility.[23]

1. A Change in Reporting Does Not Alleviate the Agency of its Duty to Further Inquire.

In *Josiah T.,* the Second Appellate District found that the Agency failed in its duty to further inquire where a grandmother said she had Cherokee ancestry and the Agency did not seek any additional information regarding ICWA for seven months. The grandmother's later denial of Indian ancestry did not alleviate the Agency's duty to further inquire. **"[A] mere change in reporting, without more, is not an automatic ICWA free pass[.]"** (*Josiah T.* at p. 405.) **"[W]hen there is a conflict in the evidence and no supporting information, [the Agency] may not rely on the denial alone without making some effort to clarify the relative's claim."** (*Ibid.*; see also *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1167-1168.)

2. If ICWA was Found Not to Apply to Full Siblings in a Previous Dependency Case, Then it is Not Likely to Apply in a Subsequent Case.

In re Charles W. (2021) 66 Cal.App.5th 483 (*Charles W.*) found that the juvenile court made an adequate ICWA inquiry where ICWA had been found not to apply to full siblings in a previous dependency case and parents had no change in information regarding Indian ancestry.

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[21] Under ICWA, the juvenile court and the Agency have an affirmative and continuing duty to inquire whether a child is or may be an Indian child. (§ 224.2, subd. (a)) This continuing duty can be divided into three phases: (1) the initial duty to inquire, (2) the duty of further inquiry, and (3) the duty to provide formal ICWA notice. (*In re D.F.* (2020) 55 Cal.App.5th 558, 566.) As part of its duty of initial inquiry, the Agency must ask "the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect" whether the child may be Indian. (§ 224.2, subd. (b).) The duty of initial inquiry requires the juvenile court and Agency to ask participants who appear before the court about the child's potential Indian status. (§ 224.2, subd. (c).) The Agency fails in this duty when it neglects to inquire of known relatives of a parent whose whereabouts are unknown. (*In re Josiah T.* (2021) 71 Cal.App.5th 388, 403-404. (*Josiah T.*))

[22] There is a "reason to believe" a child involved in a proceeding is an Indian child whenever the court social worker, or probation officer has information suggesting that either the parent or the child is a member or may be eligible for membership in an Indian tribe. (§ 224.2, subd. (e)(1).)

[23] § 224.2, subd. (e)(2)(A)-(C).

ICWA was found not to apply to two older minors, who were full siblings, in January 2019. In December 2020, the older siblings and a new baby were detained and ICWA was found not to apply to all three siblings. If "ICWA did not apply to the two older children, then it would not apply to the baby." (*Charles W.* at p. 490.) The court noted that no new evidence regarding ICWA was presented to the court or asserted on appeal. **Without any new evidence the children are Indian children, a prior finding that ICWA was inapplicable to full siblings makes it unlikely that additional inquiry or notice would have revealed the children to be within ICWA**, rendering any error harmless. (*Charles W.* at p. 492.)

3. Ancestry.com Results are Insufficient Evidence to Require Further ICWA Inquiry.

In *In re J.S.* (2021) 62 Cal.App.5th 678, the Second Appellate District found that a grandparent's Ancestry.com results that she was 58% Native American were insufficient to require the department to carry out further inquiry because the term "Native American" has a different connotation for purposes of Ancestry.com. The results did not specify any particular tribe. The term "Native American" for purposes of Ancestry.com includes ethnic origins from North and South America. The grandparent was of Mexican ancestry and was "nearly 100% certain that none of her relatives/family have been eligible and/or enrolled in any tribe(s)." Because the Ancestry.com results did not contain the identity of a possible tribe or any specific geographical region, the results have little usefulness in determining whether the minors were Indian children as defined under ICWA.

B. Must a Parent Allege Indian Ancestry to Show Prejudice?

Because the Agency's failure in their duty of initial inquiry involves state law, the reviewing court applies the *Watson*[24] standard and may not reverse the juvenile court findings unless it finds that the error was prejudicial. (Cal. Const., art VI, § 13.)

In *In re A.C.* (2021) 65 Cal.App.5th 1060 (*A.C.*), the Fourth Appellate District found that the juvenile court erred by failing to ask Father whether he had Indian ancestry. However, the error was harmless because Father did not claim at any stage of the proceedings that he has any Indian ancestry. A failure to comply with the duty of inquiry "must be held harmless unless the appellant can show a reasonable probability that he or she would have enjoyed a more favorable result in the absence of the error." (*A.C.* at p. 1069.) The Fourth Appellate District interpreted this to mean that a parent asserting an ICWA failure to inquire must show that he or she would have claimed some kind of Indian ancestry. (*Ibid.*) While a requirement that an appellant submit evidence outside the record is a substantial departure from normal appellate procedure, in a case in which a parent is claiming a failure of the duty of inquiry, the court will make an exception to that general rule. (*A.C.* at p. 1071.)

Promptly, both the Second Appellate District and the Fourth Appellate District came forward with opinions disagreeing with *A.C.* In *In re Y.W.* (2021) 70 Cal.App.5th 542 (*Y.W.*), the Second Appellate District said that a parent "does not need to assert he or she has Indian ancestry

[24] *People v. Watson* (1956) 46 Cal.2d 818.

to show a child protective agency's failure to make an appropriate inquiry under ICWA and related law is prejudicial." *Y.W.* stated that *A.C.* "missed the point," noting that "[i]t is unreasonable to require a parent to make an affirmative representation of Indian ancestry where the Department's failure to conduct an adequate inquiry deprived the parent of the very knowledge to make such a claim." (*Y.W.* at p. 556.)

In *In re Benjamin M.* (2021) 70 Cal.App.5th 735 (*Benjamin M.*), the Fourth Appellate District also disagreed with *A.C.,* finding that when there has been a failure to carry out ICWA inquiry duties, the best option is for the court to "reverse where the record demonstrates that the agency has not only failed in its duty of initial inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child." (*Benjamin M.* at p. 744.) The right at issue in the ICWA context is as much an Indian tribe's right to a determination of a child's Indian status as it is a right of any sort of favorable outcome for the litigants already in a dependency case. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8; *Benjamin M.* at p. 746.)

VIII. Competent Counsel

A. Failure to File a Timely Notice of Appeal is Ineffective Assistance of Counsel.

The California Supreme Court held this year in *In re A.R.* (2021) 11 Cal.5th 234 (*A.R.*) that relief may be sought when an attorney fails to file a timely notice of appeal in accordance with a client's instruction in a parental rights termination case. The Supreme Court extended this relief, which has existed in the context of criminal cases since *In re Benoit* (1973) 10 Cal.3d 72, to parents in dependency cases.

There is a due process and statutory right to counsel for a parent facing the termination of parental rights. (*Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 32; Welf. & Inst. Code, § 366.26, subd. (f)(2).) When a parent asks court appointed counsel to appeal an order and the attorney has failed to timely file a notice of appeal of an order terminating parental rights, parents whose rights have been terminated may seek relief based on the denial of the statutory right to the assistance of competent counsel. Additionally, parents have a right to appeal and the denial of competent counsel threatens this right to appeal.

To succeed in a claim for relief from default, a parent must show that they would have filed a timely appeal absent attorney error and that they diligently sought relief from default within a reasonable time frame. A reasonable time frame should consider the child's strong interest in finality. (*A.R.* at p. 258.) "Because time is of the essence in matters affecting children's long-term placement, whether relief is granted will depend on the parent's promptness and diligence in pursuing the appeal." (*A.R.* at p. 242.) It is not required that the parent demonstrate that the appeal would have been successful. (*A.R.* at p. 252-253.)

Given the potentially slow habeas process and the need for swift resolution in dependency cases, a court has substantial discretion to determine the specific procedures to

handle relief from default based on an attorney's late filing. (*A.R.* at p. 257.) The application for relief should be directed to the Court of Appeal rather than the superior court. (*Ibid.*)

The language of *A.R.* seems to limit itself to cases involving the termination of parental rights—"we today hold that when their court-appointed attorneys have failed to timely file a notice of appeal of an order terminating parental rights, parents whose rights have been terminated may seek relief based on the denial of the statutory right to assistance of competent counsel." (*Ibid.*) However, it could be argued that the rights to competent counsel and to appeal, upon which the *A.R.* holding is based, would also apply to any appealable order throughout the process. The Fourth Appellate District found such, in an unpublished decision, in *In re M.M.* (Dec. 2, 2021, G060175) [nonpub. opn.] [the protections illustrated in *A.R.* also apply to appeals from the denial of a section 388 petition.]

IX. Appealability Issues

A. Must Subsequent Orders be Appealed to Preserve Appeal of Erroneous Jurisdictional Findings?

An order terminating juvenile court jurisdiction does not necessarily render an appeal from jurisdictional findings moot because erroneous jurisdictional findings can have unfavorable consequences extending beyond termination of dependency jurisdiction or touch on matters of public concern.[25] Mootness must be decided on a case-by-case basis.[26]

In *In re Rashad D.* (2021) 63 Cal.App.5th 156 (*Rashad D.*), the Second Appellate District found Mother's appeal of erroneous jurisdictional findings moot because Mother did not appeal the exit orders terminating jurisdiction and issuing custody orders. Mother argued that the appeal was not moot because the exit custody orders were different than the original orders, and the issue was one of broad public interest. The appellate court rejected Mother's argument, finding that for the court to provide effective relief, a parent must appeal not only from the jurisdiction finding, but also from the orders terminating jurisdiction and modifying the parent's prior custody status. (*Rashad D.* at p. 159.) The court's reasoning was that unless the appellate court can reverse the order terminating dependency, the juvenile court has no jurisdiction to conduct any further hearings because the case is closed. (*Rashad D.* at p. 164.)

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[25] A final judgment in a dependency proceeding may be appealed and any subsequent order may be appealed from as an order after judgment. (§ 395.) Because the courts resolve only controversies, an appeal may become moot when a change in circumstances makes it impossible for the reviewing court to grant effective relief. (*In re E.T.* (2013) 217 Cal.App.4th 426, 436.) Generally, an order terminating juvenile court jurisdiction renders an appeal from an earlier order moot. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) However, this mootness is not automatic, but must be decided on a case-by-case basis. (*Ibid.*) An appeal from jurisdiction findings is not necessarily mooted by termination of jurisdiction because an erroneous jurisdiction finding can have unfavorable consequences extending beyond termination of dependency jurisdiction. (*Ibid.*) Even if the issue is moot, an appeal can still be decided if needed to resolve an issue of continuing public concern. (*Laurie S. v. Superior Court* (1994) 26 Cal.App.4th 195, 199.)

[26] *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.

In re S.G. (2021) 71 Cal.App.5th 654 (*S.G.*) disagreed with *Rashad D.*'s "broad proposition that an appellate court can never grant effective relief in a dependency appeal following the unappealed termination of juvenile court jurisdiction." (*S.G.* at p. 658) When there is a decision on appeal, the trial court is reinvested with jurisdiction of the case, defined by the remittitur. (*S.G.* at p. 664.) The remittitur creates the limited jurisdiction needed for the juvenile court to correct reversible errors. (*Ibid.*) The termination of juvenile court jurisdiction does not categorically prevent a reviewing court from granting effective relief in all cases. (*S.G.* at p. 663-664.) Mootness must be decided on a case-by-case basis, based on the facts of the particular case. (*S.G.* at p. 664.)

The *S.G.* court agreed with the conclusion that the *Rashad D.* appeal was moot, to the extent that its holding is limited to a scenario in which an appellant challenges custody findings in an unappealed exit order. (*S.G.* at p. 667.)

X. Miscellaneous

A. Does the Section 361.5, Subdivision (e) Bypass Provision Violate Equal Protection?

Section 361.5, subdivision (e) allows the court to deny an incarcerated parent reunification services if it finds by clear and convincing evidence that those services would be detrimental to the child.[27]

In *In re Joshua S.* (June 14, 2021, F082100) [nonpub. opn.], review denied 9/29/2021 (S269868) (*Joshua S.*)), Mother was in jail awaiting the resolution of a criminal case and was unable to post bail. The court bypassed Mother as an incarcerated parent. Mother appealed. The Fifth Appellate District affirmed the decision, finding that the term "incarcerated" plainly means "jailed" and that the obvious purpose of section 361.5 subdivision (e)(1) is to address reunification services in cases where parents are not at liberty to come and go or to schedule activities as they please. (*Edgar O. v. Superior Court* (2000) 84 Cal.App.4th 13, 17-18.) Mother petitioned for review, which was denied.

Justice Liu issued a concurring statement stating: "I write to call attention to a separate issue not directly raised by Mother's Petition for Review: whether the statutory scheme, as construed by the Court of Appeal, violates principles of equal protection." (*Joshua S.* at pp. 3-4.) Justice Liu points to two ways in which parents who cannot post bail are treated differently than those who can: (1) a parent who can post bail is entitled to reunification services while the parent

[27] Section 361.5, subdivision (e) contains a bypass procedure for a parent or guardian who is "incarcerated, institutionalized, or detained by the United States Department of Homeland Security, or has been deported to the parent's or guardian's country of origin." (§ 361.5, subd. (e)(1)) The juvenile court may deny reunification services if it finds by clear and convincing evidence that those services would be detrimental to the child. (*Ibid*.) In making that determination, the juvenile court shall consider factors such as the length of the sentence, the nature of the crime, and the likelihood of the parent's discharge from incarceration. (*Ibid*.)

in custody pending charges are subject to a detriment analysis and can be denied reunification services and (2) because the juvenile court can consider "the nature of the crime," only parents who are in custody pending trial are subject to the court's consideration of their moral culpability. (*Joshua S.* at pp. 4-5.) The above cannot be reasons for denying reunification services to people who can post bail.

Justice Liu quoted the recent criminal case addressing the unconstitutionality of bail, *In re Humphrey* (2021) 11 Cal.5th 135, 147 "[t]he common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional." "The disadvantages to remaining incarcerated pending resolution of criminal charges are immense and profound." (*Joshua S.* at p. 7.) One of these potential disadvantages is the possible termination of parental rights.

Finally, Justice Liu made a call to action, stating that the courts may need to resolve "[w]hether principles of equal protection permit disparate treatment in the provision of reunification services to parents who can afford bail and those who cannot[.]" (*Ibid.*) Justice Liu suggests that the section 361.5, subdivision (e)(1) factors may be considered to decide what type of reunification services are appropriate but not to deny reunification services altogether.

B. Special Immigrant Juvenile Status Findings are Mandatory When Sufficient Evidence of the Elements is Presented.

The Special Immigrant Juvenile (SIJ) classification provides relief to undocumented children by providing a means to seek lawful permanent residence in the United States.[28] While the federal government has exclusive jurisdiction over immigration, state courts make the preliminary SIJ findings, which serve as the prerequisite to obtaining SIJ status.[29]

In re Scarlett V. (2021) 72 Cal.App.5th 495 (*Scarlett V.*) reiterated that the juvenile court must make SIJ findings. **"[T]he court's duty to enter an order with the [SIJ] findings was mandatory, not discretionary."** (*Scarlett V.* at p. 502.) In *Scarlett V.*, the minor was declared a dependent, placed with her mother, and reunification with her father was found not to be viable. The seven-year-old minor had come to the United States when she was two years of age and did not have family able to care for her in her country of origin, Honduras. No evidence was

[28] The Special Immigrant Juvenile (SIJ) classification provides relief to immigrant children whose interests would not be served by returning to their country of origin. (*Bianka M. v Superior Court* (2018) 5 Cal.5th 1004, 1012.) A child is eligible for SIJ status if: (1) the child is a dependent of a juvenile court or in the custody of an individual, entity or agency by court order; (2) the child cannot reunify with one or both parents due to abuse, neglect, abandonment, or similar; and (3) it is not in the child's best interest to return to his or her home country or the home country of his or her parents. (*Id.* at p. 1013.) SIJ status permits a recipient to seek lawful permanent residence in the United States, which, in turn, permits the recipient to seek citizenship after five years. (*Ibid.*)

[29] While the federal government has exclusive jurisdiction over immigration, state juvenile courts are charged with making the preliminary determinations that serve as a prerequisite to obtaining SIJ status. (*In re Israel O.* (2015) 233 Cal.App.4th 279, 284; Cal. Code of Civ Proc. § 155.) A court shall make SIJ findings if "there is evidence to support those findings, which may consist solely of, but is not limited to, a declaration by the child who is the subject of the petition[.]" (*Ibid.*)

presented to contradict these assertions. The juvenile court's ruling that making SIJ findings was discretionary was in error because there was uncontradicted and unimpeached evidence that supported the minor's request.

XI. Pending Supreme Court Issues

There are three dependency cases currently pending before the California Supreme Court.

A. Whether the Appeal of Jurisdictional Findings is Moot When Jurisdiction Had Been Terminated in the Interim, Even though Parents Might Be Registered on the Child Abuse Central Index?

The court granted review in *In re D.P.* (Feb. 10, 2021, B301135; S267429) [nonpub. opn.] on 5/26/2021 on the following issues: (1) Is an appeal of a juvenile court's jurisdictional finding moot when a parent asserts that he or she has been or will be stigmatized by the finding? (2) Is an appeal of a juvenile court's jurisdictional finding moot when a parent asserts that he or she may be barred from challenging a current or future placement on the Child Abuse Central Index as a result of the finding?

In *In re D.P.*, dependency proceedings were initiated when two-month-old minor was brought to the hospital and a healing rib fracture was detected. Parents could not explain how the injury occurred and the doctor noted that the injury could have been sustained accidentally, though intentional conduct could not be ruled out. The juvenile court sustained subdivision (b) allegations, noting that this was "at its most—a possible neglectful act [.]" The minors remained with the parents under informal supervision pursuant to section 360, subdivision (b) until jurisdiction was eventually terminated.

The parents argued that their appeal was not mooted by the termination of jurisdiction because the jurisdictional finding would impair their ability to serve as a placement option for other family members and the jurisdictional finding subjects them to registration on the Child Abuse Central Index (CACI), which is stigmatizing and will negatively impact their ability to participate in their children's extracurricular school activities and jeopardizes mother's employment as a teacher. The Second Appellate District found that the appeal was moot, noting that the Agency's reporting duty is triggered when an investigator determines it is more likely than not that child abuse or neglect has occurred and is not dependent on the juvenile court sustaining a section 300 petition.

B. Is it Structural Error for a Juvenile Court to Proceed With Jurisdiction and Disposition Hearings Without an Incarcerated Parent's Presence?

The court granted review in *In re Christopher L.* (2020) 56 Cal.App.5th 1172 (S265910/B305225) on 2/17/2021 on the following issue: Is it structural error, and thus reversible per se, for a juvenile court to proceed with jurisdiction and disposition hearings without an incarcerated parent's presence and without appointing the parent an attorney?

In *In re Christopher L.*, Father was incarcerated when minors were removed from Mother. Father was provided with notice of the detention hearing and sent a letter in response to the social worker requesting that he be able to attend the jurisdiction/disposition hearing telephonically. Despite this request and the provision of Penal Code section 2625, subdivision (d), Father was neither present at the hearing nor represented by counsel. Father was bypassed at the disposition hearing and his parental rights were ultimately terminated.

The Second Appellate District found that Father was denied due process when the court held the jurisdiction/disposition hearing without his or his counsel's presence and by failing to find him presumed father of the minors. However, applying the *Watson* harmless error standard, the court found the juvenile court's errors did not warrant automatic reversal. Citing *In re James F.* (2008) 42 Cal.4th 901, 915-919, the court rejected the argument that all due process errors are reversible per se. While this is the case in criminal proceedings, '[t]he rights and protections afforded parents in a dependency proceeding are not the same as those afforded to the accused in a criminal proceeding." (*Id.* at 915.) This is because "the welfare of the child is at issue and delay in resolution of the proceeding is inherently prejudicial to the child[.]" Because Father was bypassable under subdivisions (b)(10) and (b)(12), had never met the minor, and would be incarcerated longer than any reunification period, "there is no basis on which even the most competent counsel could have shown it was in [Minor]'s best interest to override the statutory presumption that reunification services should be denied."

C. Are Juvenile Courts Required to Extend Reunification Efforts Beyond the 18-Month Review When Families Have Been Denied Adequate Reunification Services in the Preceding Review Period?

Update: The Supreme Court has granted review in Michael G. v. Superior Court, S271809. (G060407; 69 Cal.App.5th 1133; Orange County Superior Court; 19DP1381.) This case presents the following issue: Are juvenile courts required to extend reunification efforts beyond the 18-month review when families have been denied adequate reunification services in the preceding review period?