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SUPREME COURT TO REVIEW CASES FINDING JURISDICTION BASED ON DEATH OF SIBLINGS

Dependency Update[1]

By Bradley Bristow[2]

In past years, published dependency opinions showed an increasing interest in construing and updating interpretations of the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 et seq. However, in the past year, the courts have returned their focus to review to more traditional issues – questions arising out of finding of juvenile court jurisdiction and also the terms of orders governing parents' visits with their children.

An example of the courts' focus on jurisdictional findings is seen in the California Supreme Court's grants of review of the published case *In re Ethan C.* (2010) 188 Cal.App.4th 992, rev. granted 12/21/10, (S187587/B2198894), and an unpublished case from the Fifth District, *In re L.L.*, rev. granted 3/28/11 (S190245/S190230). In *Ethan C.*, concerning the death of the children's sibling in a vehicle accident when the father failed to secure the child in a car seat, the Second District, Division 1, held a jurisdictional finding under Welfare and Institutions Code[3] section 300, subdivision (f), concerning death of another child through the parent's neglect, did not require a showing of criminal neglect. In *L.L.*, the subdivision (f) finding was based on a pattern of physical abuse of the sibling leading to the child's death, and the mother's failure to protect the child.

The questions for review in *In re Ethan C.* are:

(1) Is criminal negligence required to support dependency jurisdiction under section 300, subdivision (f), on the ground a parent "caused the death of another child through abuse or neglect?"

(2) What is the definition of the word "caused" in the context of dependency jurisdiction under the statute? Specifically, does it mean the sole cause or a contributing cause, and should the existence of an intervening, superceding cause be considered?

(3) Does the statute require proof of a current or future risk of harm?

The question in *In re L.L.* is essentially the first question from *In re Ethan C.* At the time of writing, counsel had yet to be appointed in either of the Supreme Court cases, so decisions are unlikely before this Fall. [4]

Jurisdiction – Procedure – The Hague Convention.

Two cases in the past year addressed the application of The Hague Convention to dependency cases and parental rights terminations, in both cases rejecting challenges to manner of service of the parent where the parent had made a general appearance. In *Kern County Department of Social Services v. Superior Court* (2010) 187 Cal.App.4th 302, the Second District, Division 4, held that once the parent has made a general appearance in the matter, confirming his submission to the jurisdiction of the court, and the father had been subsequently served with notice of the six-month hearing by first class mail there was no violation of the Hague Convention or California law to proceed on the hearing. The Second Division, Divison 7, came to a similar result in *In re Vanessa Q.* (2010) 187 Cal.App.4th 128, a parental rights termination under Family Code section 7822.

J**urisdiction – Procedure – SCRA**

In *In re Amber M.* (2010) 184 Cal.App.4th 1223, the Fourth District, Division 1 reversed juvenile court orders sustaining jurisdiction and approving a voluntary plan for non-compliance with the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. Appx sec. 501 et seq. SCRA requires a mandatory stay of at least 90 days when the application of a servicemember shows the servicemember's military duties materially affect his or her availability to appear. In this case, even if the letter from the father's commanding officer requesting a stay did not meet the statute's technical requirements of showing the father's deployment to Iraq prevented him from obtaining leave, the letter did establish the father's probable unavailability, and the court was required at least to stay the proceedings until further information could be obtained from the commanding officer concerning the father's ability to obtain leave.

Jurisdiction - Procedure - UCCJEA

In *In re Karla C.* (2010) 186 Cal.App.4th 1236, the trial court placed the children with the father and transferred the case to Peru. The First District, Division 5, reversed. Before transferring the case under the Uniform Child Custody and Jurisdiction Enforcement Act, the court must consider evidence concerning the enforceability of its orders in the other jurisdiction.

Jurisdiction - Procedure – Evidence - Medical Records.

In *In re R.R.* (2010) 187 Cal.App.4th 1264, the father moved to quash the County's subpoena duces tecum seeking medical records. The motion was denied, jurisdiction was sustained and father's visitation with the child was monitored based in part on

consideration by the court of medical records showing his substance abuse within the past year. Father's arguments on appeal included challenges to the application of the motion to quash time lines contained in Code of Civil Procedure section 1985.5, which essentially gave the County access to his medical records covered by the patient-physician privilege before his motion to quash could be heard and argued his right to privacy was violated in that the records were privileged. The Second District, Division 8, found it unnecessary to resolve the section 1985.5 issue, because the privilege was deemed waived by father's tendering the issue of his drug usage. The father had requested unmonitored visits with his child. Although he had admitted the mother had introduced him to methamphetamine six years previously, he denied current usage. But the mother had stated the parents had used methamphetamine in the past year. Under these facts, the father had tendered the issue and waived the privilege. The evidence qualified under the hearsay rule applicable in jurisdictional proceedings, section 355, as the evidence was attached to a social study and it was corroborated by the mother's statement.

Jurisdiction – Procedure – Dismissal of Count.

In *In re Andrew L.* (2011) 192 Cal.App.4th 683, the Fourth District, Division 1, held the juvenile court did not err in granting the County's motion to dismiss under section 390 one count under section 300, subdivision (a) and ten words of an allegation under subdivision (b) after finding the petition true. Although section 390 may not have been appropriate where the motion was not to dismiss the entire petition in the child's best interest, the court had inherent powers under Code of Civil Procedure sections 348 and 487, subdivision (a)(1) to conform pleading to proof, and the parent received notice and an opportunity to be heard, and the child's best interest did not support dismissal of the entire case because refiling would cause unnecessary delay.

Jurisdiction – Sufficiency of Evidence – Physical Abuse

In *In re Giovanni F*. (2010) 184 Cal.App.4th 594, the Fourth District, Division 1, found the evidence sufficient to support a finding under section 300, subdivision (a), where the minor, an infant, had not been physically harmed, but the father had an extensive history of physical violence with the mother and others, sometimes in the presence of the child. On one occasion while the father was driving with one hand on the steering wheel, he attempted with the other arm to hit and choke the mother. The child was a passenger in the car. There was a substantial risk the child would suffer serious physical harm.

But in *In re Daisy H.* (2011) 192 Cal.App.4th 713, the Second District reversed the findings under section 300, subdivisions (a) and (b), where the evidence was that the father had made derogatory remarks to the children about their mother. First, the

subdivision (a) finding was not supported because there was no evidence of intentional harm or risk of intentional harm. Second, as to the subdivision (b) finding, dependency jurisdiction is not invoked by "emotional harm." Here, the Department conceded the minors were healthy and were not suffering any physical harm.

Jurisdiction – Sufficiency of Evidence -- Failure to Protect.

In the past year, the appellate courts set aside several jurisdictional findings under section 300, subdivision (b), for insufficient evidence.

In *In re V.M.* (2010) 191Cal.App.4th 245, the Second District, Division 8, the court found the evidence insufficient where the father had not cared for the child, the mother died, and the child was subsequently cared for by the guardians, her grandparents. At the time the juvenile court sustained jurisdiction, the child was four years old and the father had bought a larger house and was seeking more visits because he wished eventually to obtain custody. The reviewing court held that the mere abdication by the father of his parental role in the past was an insufficient showing of a substantial risk of serious harm or injury.

And the Second District, Division 1, reversed a finding that the father had failed to provide the child with necessities of life in *In re X.S.* (2010) 190 Cal.App.4th 1154, where the father had not known he was the biological father until the child was eight months old. Although the father could have demanded earlier paternity testing he began supporting the child immediately after finding out he was the father. The child was not at risk of physical harm because of his actions. The case came to the court's attention through the conduct of the mother and not the father, and the child had otherwise been well cared for by the maternal grandmother.

Jurisdiction – Sufficiency of Evidence – Sexual Abuse.

In *In re Maria R.* (2010) 185 Cal.App.4th 48, the juvenile court sustained allegations under section 300, subdivision (d), based on sexual abuse by the father of the two oldest girls, and sibling allegations under subdivision (j) as to two younger children, including a boy. On appeal the mother challenged the sufficiency of the evidence supporting the findings. The Fourth District, Division 1, affirmed all of the findings except for the subdivision (j) finding as to the boy. The sexual abuse findings under subdivision (d) were supported by the children's statements and by proof that the mother refused to believe the children and carried messages to the children from the father in violation of a restraining order. These facts also showed the younger daughter was at risk per subdivision (j). However, the father had only abused daughters, and there was no

evidence that this placed the son at risk (disagreeing with *In re Karen R.* (2001) 95 Cal.App.4th 84, and other cases). The matter was remanded to the juvenile court with instructions to determine the whether the son had been harmed or was at a risk of harm.

Jurisdiction - Sufficiency of Evidence – Death of Another Child.

In *In re A.M.* (2010) 187 Cal.App.4th 1380, the Fourth District, Division 1, upheld a jurisdictional finding under section 300, subdivision (f), causing the death of another child, against the father's appellate challenge that there was insufficient evidence of causation. The mother had alleged the father had punched, kicked, and smothered the minor with a pillow. The father admitted pushing the child, James, against a pillow, knowing that he was having difficulty breathing because of the pillow. When a parent recognizes a risk to a minor and has the ability to intervene but does not, the parent is a substantial factor in the death, which satisfies both the civil and criminal standards. On this point, the father's statement was sufficient to establish causation and neglect despite the autopsy doctor's opinion finding the cause of death "undetermined." Also, a finding of jurisdiction under subdivision (f) does not require a showing of current risk.

Disposition - Placement with Non-Offending Parent.

In *In re C.B.* (2010) 188 Cal.App.4th 1024, the juvenile court placed the child with a non-offending parent who lived in Alabama. The Department appealed on the ground that Alabama had not yet complied with the Interstate Compact on the Placement of Children (ICPC). The Fourth District, Division 2, affirmed, holding ICPC requirements do not apply to placements with parents, offending or non-offending.

In *In re Pedro Z.* (2010) 190 Cal.App.4th 12, the minor was placed with the mother on family maintenance. The father argued on appeal the court was required to provide him with reunification services. The Second District, Division 1, affirmed. Reunification services are not mandated under section 361.5 when a child is placed neither in foster care nor with the formerly custodial parent.

Disposition - Reunification Plans.

In *In re G.G.* (2010) 186 Cal.App.4th 150, the Second District, Division 5, upheld a condition that the father undergo counseling to address his racist and sexist comments, despite the father's contention that it was not established that he had made these comments in the presence of the minors. The court found that in order to resolve the problems leading to the dependency it was necessary for the father to work with school and child care professionals. The father's epithets were part of a cycle of anger which interfered with the reunification program, so the counseling condition was reasonable.

Disposition - Denial of Services to non-custodial parent

The Fourth District, Division 3, in *In re A.L.* (2010) 188 Cal.App.4th 138, came to a similar result as in *Pedro Z., supra*, but in *A.L.* the minor *had been* in the mother's care prior to jurisdiction. As the court immediately offered family maintenance services, and there was no removal of the child from the home, there was no need for reunification services.

Disposition – Denial of Services – Severe Physical Abuse.

In *In L.Z. v. Superior Court* (2010) 188 Cal.App.4th 1285, the two-month old infant suffered unexplained fractures to the ribs and arms while in the care of teenaged parents who had domestic violence and substance abuse issues, and the juvenile court sustained jurisdiction under section 300, subdivision (b), and denied services to both parents under section 361.5, subdivisions (b)(5) and (e). At the disposition hearing, it had been stipulated that a person who had not inflicted these injuries or observed them to occur, would not know how they had been inflicted. Here the only indications that a party had knowledge of the injury pointed to the father. The mother had him move out and obtained a restraining order against him. On her petition for extraordinary relief, the First District, Division 3, ordered she be granted services, holding there was no substantial evidence that she knew or should have known the minor was injured prior to the diagnosis by the medical professionals. Although there was no duty to examine personal responsibility of each parent at the time jurisdiction was found, the court was required to do so when denying services, and the court erred in focusing its examination on the father's unwillingness to accept responsibility in determining the mother's eligibility for services.

Disposition – Denial of Services – Conviction of Violent Felony.

The juvenile court's denial of services to the father under section 361.5, subdivision (b)(12), because of his 2005 and 2006 robbery convictions was upheld by the Fourth District, Division 1, in *In re Allison J.* (2010) 190 Cal.App.4th 1106. The court noted the bypass provisions have been upheld in other decisions, including *In re Renee J.* (2001) 26 Cal.App.4th 735.

Review Hearings - Termination of Services.

In *V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, the juvenile court terminated services where the father had attended programs during his incarceration, but did not make substantial progress after 18 months. He did not communicate with the minor while incarcerated and he did not attend all available programs. The child was bonded to his foster parents and a change in placement was not in his best interest. For

these reasons, the Sixth District denied his petition for extraordinary relief seeking additional services.

Modification Petitions – Section 387.

In *In re A.C* (2010) 186 Cal.App.4th 976, the minor was a dependent child who had been freed for adoption. The court granted the Department's petition under section 387 to remove the child from her foster placement because she had been destructive of property and sexually inappropriate. On appeal, she alleged that a section 388 petition rather than the section 387 petition was appropriate in this instance. The Sixth District agreed. Section 387 applies only to children who have been removed from the custody of their parents, when the prior disposition has been ineffective. It does not apply when parental rights have been terminated.

However a petition under section 387 was the correct remedy in *In re A.O.* (2010) 108 Cal.App.4th 103, a case in which on the previous disposition the minor had been placed with the father, and the child was now in risk of physical danger in that the father had now been incarcerated. The father's appeal challenged jurisdiction on the grounds that he had made plans to have the child cared for by the stepmother. However, the Second District, Division 1, held this analysis may have been correct had this been an original petition under section 300, subdivision (g), but this was a subsequent petition and the analysis differs at this stage of the case.

Modification Petitions - Section 388 - Newly Discovered Evidence.

In *In re H.S.* (2010) 188 Cal.App.4th 103, the court sustained a finding of severe physical abuse based upon expert evidence. The court ordered placement of the children and denied reunification services. Three months later, the father filed a petition under section 388, alleging newly discovered evidence in that an expert had reviewed the medical reports and concluded there were explanations for the children's injuries other than abuse. The court denied a hearing on the petition. The Third District affirmed. The evidence was not "new"within the meaning of section 388. New evidence is material evidence that the party could not have produced with due diligence at the trial. Here, the evidence was not new. The expert merely had a different opinion, one which could have been presented at the jurisdiction hearing.

Parental Rights Termination - Unfitness Finding.

In *In re Frank R.* (2011) 192 Cal.App.4th 532, the father, a non-offending parent did not seek services. Also, he did not seek custody because he was living in a motel.

The juvenile court terminated both parents' parental rights. The Second District, Division 3 reversed because the required finding of unfitness or detriment had not been made as to the father. On remand the juvenile court was to determine whether a finding of his unfitness could be made.

Parental Rights Termination - Beneficial Relationship.

In *In re C.B.*[5] (2010) 190 Cal.App.4th 102, the mother established at the section 366.26 hearing that she had a positive and substantial relationship with the children. They had lived with her for several years; they missed her, were excited to see her, and wanted continued contact with her. However, the juvenile court terminated her parental rights based on the court's understanding that the proposed adoptive parent would maintain continuing contact with the children. The Sixth District reversed the order. The juvenile court's consideration of the potential for continuing contact was improper. Once parental rights are terminated the parent in fact has no legal remedy to enforce visitation.

The mother in *In re Scott B.* (2010) 188 Cal.App.4th 452, also proved a beneficial relationship with her seven-year-old son. The initial jurisdiction was based on failure to protect, domestic violence, and an unclean home, and both family maintenance and reunification services failed to obtain reunification. The child, who was diagnosed with ADHD, had behavior problems soon after his removal, but his behavior later improved. Mother had maintained a parental role with him during the time he was placed. The minor visited with her every week and missed his mother when she was gone. When he attended the hearing, he went to sit with her. Although he said he supported "adoption," he thought that meant he and his foster parent could all go somewhere "fun." He was upset about his mother's health problems, and he said he would run away if he could not be with his mother, and this is why the CASA recommended the adoption be delayed. On these facts, the Second District, Division 3, reversed the order terminating parental rights. The minor's history of emotional problems and his repeated insistence that he would prefer to live with mother support the compelling reason for finding the termination of parental rights would be detrimental to the minor – namely the interruption of visits would be emotionally detrimental. As in *In re C.B.*, *supra*, the court noted that any further visits after termination of parental rights would be in the discretion of the social worker.

However, recent beneficial relation cases finding arguments of detriment to the child speculative included *In re Jose C.* (2010) 188 Cal. App.4th 147 (Dist. 4, Div. 3.)

Parental Rights Termination – Sibling Detriment Exception.

In *In re Bailey J.* (2010) 189 Cal.App.4th 1308, Bailey, an infant, had been placed

with his older sibling, Angelina, but Angelina was subsequently returned to the care of the mother. On appeal from the parental rights termination order, mother's contention the sibling detriment exception to adoption under section 366.26, subdivision (c)(1)(B)(v) was rejected by the Sixth District. Although the evidence showed there was a relationship between the children, it did not establish a closely bonded relationship.

Parental Rights Termination – Abandonment - Family Code section 7822 .

In *In re Marriage of Jill and Victor D.* (2010) 185 Cal.App.4th 491, the mother left the father in 2000, taking the children with her, and obtained a restraining order againt him. The father did not until 2006 take actions necessary to meet requirements for visitation, and he did not support the children until his wages were garnished. On appeal from a parental rights termination order based on finding of abandonment, he contended the court had erred in finding the original circumstances surrounding how the children came into the mother's custody irrelevant, because it was the mother who had left, not the father. The Third District affirmed, finding the trial court did not err. The abandonment was based on a separate period of time -- father's subsequent failure to support or and obtain visits.

Parental Rights Termination – Effect of Relinquishment.

Recently, the decision in *In re R.S.* (2009) 179 Cal.App.4th 1137, held that a parent's voluntary relinquishment that had become final before the court terminated parental rights under section 366.26, deprived the juvenile court of jurisdiction to proceed. In *In re B.C.* (2011) 192 Cal.App.4th 129, the question arose whether the start of a relinquishment proceeding necessarily compels the same result. In this case, the child was bonded to the foster parents, so the court had issued a "do not remove" order. The mother filed a relinquishment in favor of the child's maternal aunt. The juvenile court, believing itself compelled to honor the relinquishment, lifted the "do not remove" order, and continued the section 366.26 hearing in order to see if the relinquishment became final. On appeals by the foster parents and the minor, the Second District, Division 3, reversed. Also, the mere acknowledgment by the adoptions agency of a pending relinquishment is not grounds for continuance of the section 366.26 hearing. Also, the pendency of a relinquishment is not grounds to lift a "do not remove"order without a determination of whether the proposed new placement is in the child's best interest.[6]

Termination of Jurisdiction.

In *In re Grace C.*, 190 Cal.App.4th 1470, the mother and the legal guardians (the maternal grandmother and great-aunt) had personal conflicts over the visitation schedule.

In a post-permanency planning hearing, the court issued a detailed visitation order and dismissed dependency jurisdiction. On the mother's appeal, the First District, Division 4, found the juvenile court had erred in dismissing jurisdiction. Section 366.3, subdivision (a) requires termination of jurisdiction unless there are exceptional circumstances. The difficulties in agreeing on details of visitation did not constitute an exceptional circumstance where the juvenile court issued a detailed visitation order and the guardians appeared to support the mother's relationship with the children. Moreover, since the court had jurisdiction over the children as guardian wards, the mother was free to petition for a change in the order if problems arose in the future.

Parent's Right to Counsel.

In the previous year, *In re Z.N.* (2009) 181 Cal.App.4th 282, reaffirmed the applicability of *People v. Marsden* (1970) 2 Cal.App.4th 118, in dependency cases. Thus, a parent may confidentially raise concerns with the juvenile court about the effectiveness of the parent's representation by appointed counsel. In *In re V.V.* (2010)188 Cal.App.4th 392, the related question whether the rule stated in *People v. Ortiz* (1990) 51 Cal.App.3d 975, 983 – concerning the right of a party to substitute retained counsel with another retained counsel, applies in dependency proceedings. The Third District confirmed that a parent need not make a showing under *Marsden* when applying to substitute retained counsel with another retained counsel. However, in this case, the juvenile court indicated it would have granted the motion had the proposed retained counsel been ready to proceed. Thus the reviewing court treated the motion as a motion to continue the hearing. As the proposed counsel was not a dependency practitioner and a continuance would have delayed the hearing substantially, the juvenile court did not abuse its discretion in denying the motion.

Minors' Right to Counsel; Conflicts.

In *In re T.C.* (2007)191 Cal.App.4th 1387, minor's counsel represented at the section 366.26 hearing two siblings recommended by the Department for adoption and a 13-year-old who was recommended for guardianship, and counsel supported the Department's positions as to both children. On appeal from the order terminating parental rights, the mother contended the court erred in not appointing separate counsel for each child in light of the conflicting plans. The Third District affirmed. The mere fact of different proposed plans did not establish a conflict (citing *In re Zamer G.* (2007) 153 Cal.App.4th 1253.) To the extent there was conflict between the younger child's interest in maintaining the sibling relationship and that child's interest in adoption, this conflict was not caused by dual representation. Also, even if there had been a conflict, the error

was harmless in that separate counsel would have argued for the same result.

Placements.

The decision in *In re N.V.* (2010) 189 Cal.App.4th 25, found the juvenile court erred in dispositional proceedings in disallowing cross-examination of the social worker concerning the parent's proposed placement of the children with the maternal grandmother. The Department had disapproved her for placement because of a history of child welfare referrals coming out of her household, including two sexual abuse charges against two persons still living in her home. However, before the hearing the grandmother moved to a new home. On appeal, the Fourth District, Division 1, noted there is no requirement that a party exhaust administrative remedies. Section 361.3, subdivision (a), requires the Department's consideration of relatives, including the grandmother, and the Department's decision is subject to independent review by the juvenile court. However, the court affirmed, finding the error was harmless because the grandmother had a child abuse history and her new home had not been inspected.

De Facto Parents.

In *In re D.R.* (2010) 185 Cal.App.4th 852, the 12-year-old dependent child, who had lived with his uncle, C.S., since he was an infant, was removed from his uncle's home because of the uncle's physical abuse, corporal punishment leaving marks. But the juvenile court did not terminate the uncle's status as de facto parent, and the County appealed this determination. The First District, Division 4, affirmed, distinguishing the California Supreme Court's decision in *In re Kieshia E.* (1993) 6 Cal.4th 688, denying de facto status to persons whose intentional misconduct is a ground for the dependency jurisdiction. Here, the question was not one of *whether to permit a person to have de facto parent status*, but *whether to terminate a long- existing status*. The court did not abuse its discretion maintaining the uncle's de facto parent status where he had a long term relationship with the child. As to his partner, K.F., there was no abuse of discretion in maintaining her de facto parent status, as she too had actively served in a parenting role and there was no evidence she had condoned any misconduct by the uncle.[7]

Indian Child Welfare Act – Notice.

On appeal from a section 366.26 order, In *In re Jonah D.* (2010) 189 Cal.App.4th 118, the mother argued the trial court erred in not making ICWA findings based on the Indian heritage of the minor's father. The question was whether the paternal grandmother's statement that she had been told as a child that she had Native American

ancestry but she did not know what tribe was enough to require notice. The Second District, Division 2, rejected the argument and affirmed, holding the information provided was too vague, attenuated, and speculative to give the court any reason to believe the minors might be Indian children.

Indian Child Welfare Act - Transfer to Tribal Jurisdiction.

In *In re Jack C.* (2011) 192 Cal.App.4th 967, the juvenile court was presented with a petition by the Minnesota Chippewa Tribe to transfer jurisdiction of the parents' three children to the tribe. The juvenile court denied the petition on the grounds including 1) its untimeliness after the case was no longer in reunification; 2) the tribal court was an inconvenient forum. The court terminated parental rights as to the youngest child. The Fourth District, Division One, reversed. Noting that the children qualified as Indian children by the determination of the Chippewa tribe despite the fact that the children had not yet been formally enrolled, the tribe's application, made about a month after receiving notice of the proceedings was timely. Moreover the tribe could provide a convenient forum as it could mitigate hardships to parties by making other arrangements to hear evidence. As to the youngest child, the parental rights order was reversed. As to the other children, the juvenile court was ordered to hear evidence on the petition.

Visitation Orders.

Five decisions in the past year specifically reviewed visitation orders, three of them concerning the degree of specificity required in a visitation order to keep it from being an improper "delegation." *In re Kyle E.* (2010) 185 Cal.App.4th 1130, concerned a visitation order made at a review hearing at which the court had terminated services and ordered supervised visitation to the father. The Third District found this order delegated too much discretion to the department. On remand, the juvenile court was to specify a minimum number of visits or order visitation to occur regularly.

Similarly, in In *re T.H.* (2010) 190 Cal.App.4th 1119, the "exit "order per section 362.4 specified the mother would have custody and the father would have supervised visitation "to be determined by the parents." The First District, Division 5, reversed, finding an improper delegation, as the order essentially gave the mother the power to deny visitation completely should the parents not be able to agree on a schedule.

But the third visitation order, issued in connection with a guardianship under section 366.3, was upheld by the First District, Division 4, in *In re Grace C., supra,* 190 Cal.App.4th 1470, where the juvenile court issued a detailed visitation order and then

dismissed dependency jurisdiction. The order detailed the frequency of visits while providing a procedure for the therapist to notify the parties if a reduction in visits was to be recommended, and giving the guardians discretion to reduce visitation on such a recommendation. The parent retained the right to petition the court for relief when the visits were reduced without good reason. This order was not to be a complete delegation to the authority over visitation and the parent retained the right to petition the court for changes in the order should problems arise.

In the fourth visitation case, *Kevin R. v. Superior Court* (2011) 191 Cal.App.4th 676, the father was a registered sex offender who was on parole. He obtained modification of his parole conditions to permit visits with his dependent daughter at the social service department's office. The court became concerned that the father was visiting with other children at the department, and suspended visits except as permitted by the parole officer. On appeal, the father contended this was an improper delegation. The Fourth District, Division 1, affirmed. Notwithstanding section 361.1, subdivision (a), which provides for visitation as frequent as possible consistent with the well-being of the child, the court may not order visitation contravening a legal condition of parole. Parole orders have a separate modification process through administrative remedies and petition for writ of habeas. Also, the social worker has no duty to intervene in parole modification proceedings in order to seek additional visitation. Thus, when fashioning a visitation order in the child's best interest, the court may consider the parent's existing conditions of parole.

Finally, in the fifth decision on visitation, *In re Brittany C.* (2011) 191 Cal.App.4th 1343, where part of the juvenile court's reason for denying visitation to the father during reunification with the four youngest children at the hearing was that the minors did not wish to visit with him, the Second District, Division 2, did not find this order to be an impermissible delegation to the children to refuse to visit. In this case, the visits with two of the children consisted of "expletive-laced tirades" and with the other two, an "utter lack of interaction." As the children were suffering emotional harm, it was not an abuse of discretion to postpone visits pending a recommendation of the children's individual therapists that conjoint therapy would not be harmful. The court may suspend visits when visits would be harmful to the children's well-being.

Juvenile Court Records - Confidentiality.

In *In re B.F.* (2010) 190 Cal.App.4th 811, the mother appealed the juvenile court's grant of the de facto parents' petition under section 827 for access to the mother's psychological evaluation. The Fourth District, Division 1, finding the court abused its

discretion in granting the petition, reversed. As a general rule, juvenile records are confidential. Mother had a high expectation of privacy in her psychological evaluation. The de facto parents were only temporary care givers, not significant participants, and there was no showing that the best interests of the child required their access to this evaluation.

Appeals and Writs – Death of Appellant.

In *In re A.Z.* (2010) 190 Cal.App.4th 1177, the father, who had appealed the order terminating his parental rights, died while the appeal was pending, and his attorney requested dismissal of the appeal. Minor's counsel requested to file supplemental briefing on the effect the dismissal of the appeal would have on the minor's right to receive financial benefits such as veteran's benefits from the father. The Fourth District, Division 3 dismissed the appeal as moot, noting the possible loss of financial benefits, but finding this outweighed by the benefits the minor would receive from finality and adoption.

Appeals and Writs – Standing. *In re T.P. v. T.W.* (2010) 191 Cal.App.4th 1428, raised the question whether the parent who wishes to terminate the parental rights of the other parent pursuant to Family Code section 7800 et seq has standing to do so when adoption is not contemplated. The First District, Division 5, reversed the order of the trial court dismissing a petition for lack of standing. Section 7841, subdivision (a) provides any interested person may petition, and subdivision (b) defines "interested person" as one who has a direct interest. Under the plain language of the statute, a parent is someone who has a direct interest. Also, case law, including *In re Marcel N.* (1991) 235 Cal.App.3d 1007, has held that adoption is not a sine qua non to a petition under section 7841.

Appeals and Writs – Reversals of Orders Terminating Parental Rights.

A parental rights termination order was reversed in *In re A.L.*[8] (2010) 190 Cal.App.4th 75, because the trial court erred in denying the mother's modification petition under section 388. Subsequently, the juvenile court reinstated the mother's parental rights but not those of the father. The father appealed and the Fourth District, Division 1, again reversed. The reversal of the order denying the modification petition voided the entire section 366.26 judgment as to both parents. Also, a court may not terminate the parental rights of just one parent. When one parent's rights are reinstated, it is in the best interests of the children to reinstate the rights of the other parent as well.

ENDNOTES

1. This article covers developments from May 1, 2010 to March 1, 2011. The article is published at http://www.capcentral.org/juveniles/dependency/case_compendiums/index.asp, copyright 2011, Central California Appellate Program. Reprinted with permission.
2. Bradley Bristow is a Staff Attorney at Central California Appellate Program. He wishes to thank attorneys Janet Sherwood and Judith Ganz and CCAP Staff Attorneys Deanna Lamb, Melissa Nappan, and Laurel Thorpe for their assistance with this article.

3. All statutory references are to the Welfare and Institutions Code unless otherwise stated.
4. The only other dependency case pending in the California Supreme Court is *In re K.C.* (2010) 184 Cal.App.4th 120, rev. granted 7/14/10, (S183320/F058395).

The question for review is: "What injury must a parent show in order to have standing to contest the denial of a petition for modification seeking placement of a child with a relative when the petition is brought after termination of services but before the selection and implementation hearing?"
5. This was a different juvenile case from *In re C.B.*, *supra*, 188 Cal.App.4th 1024.
6. The court also found error in not appointing a guardian ad litem for the mother.
7. In *In re Giovanni F.*, *supra*, 184 Cal.App.4th 594, a juvenile court's granting of de facto parent status to the child's maternal grandmother survived appellate challenge. The grandmother had assumed the child's day-to-day care of the child and was protective of him.
8. This was a different juvenile case from *In re A.L.*, *supra*, 188 Cal.App.4th 138.