CALIFORNIA SUPREME COURT FINDS DEPENDENCY JURISDICTION OVER CHILDREN WHOSE SIBLINGS HAVE BEEN ABUSED

Dependency Update[1]

By Bradley Bristow[2]

Does a father's sexual abuse of his daughter support a determination of jurisdiction for his sons as well as the daughters? Decisions of the California Court of Appeal had been in dispute on this for over a decade. In *In re Rubisela E.* (2000) 85 Cal.App.4th 177, *In re Maria R.* (2010) 185 Cal.App.4th 48, and *In re Alexis S.* (2012) 205 Cal.App.4th 48, courts reversed jurisdictional findings in this situation, holding that mere sexual abuse of a female child, without more, did not demonstrate a substantial risk for the male children. A significant number of cases held to the contrary. (See, e.g. *In re P.A.* (2006) 144 Cal.App.4th 1339.)

In *In re I.J.* (2013) 56 Cal.4th 766, the California Supreme Court resolved much of the dispute in a case in which the father of five children had committed numerous acts of substantial sexual conduct with his oldest daughter during a three-year time period, and the California Court of Appeal, in a split decision, affirmed the jurisdictional findings under Welfare and Institutions Code[3] section 300, subdivision (j), over the sons, as well as the daughters.

At the outset the Supreme Court noted that subdivision (j) is concerned with substantial risk to children under subdivisions (a), (b), (d), (e), or (i), regardless of the subdivision describing the abuse to the sibling. Subdivision (j) supports analysis of the totality of the circumstances. Subdivision (j) does not require a showing of the scientific basis for belief that a child of a different gender was a risk. To the contrary, the court noted that section 355.1 provides for a prima facie showing of jurisdiction in the situation of a parent who has sexually abused any child. Thus, section 355.1 provided some basis for a finding of jurisdiction over the siblings. Here the finding was also supported by the evidence of prolonged and severe sexual abuse of the daughter.

The court noted that this did not require jurisdiction be asserted over all children in all cases as there were some cases in which the totality of the circumstances did not support a finding that the siblings were at risk (citing *In re Jordan R.* (2012) 205 Cal.App.4th 111 (upholding a juvenile court's refusal to find jurisdiction over the son).[4]

In another significant case, the United States Supreme Court has granted certiorari and heard oral argument in *Adoptive Couple v. Baby Girl* (2012) 731 S.E.2d 550, cert. granted 1/4/2012 (12-399). The issues have been described as: "(1) Whether a non-custodial parent can invoke the [Indian Child Welfare Act, 25 U.S.C. 1901 et seq.] to block an adoption voluntarily and lawfully initiated by a non-Indian parent under state law [and] (2) Whether ICWA defines parents in 25 U.S.C. sec. 1903(9) to include an unwed biological father who has not complied with state law rules to attain legal status as a parent." There may also be implications for the so-called "Existing Indian Family Doctrine." (In this case, the Supreme Court of Georgia ruled that ICWA applied.)

Jurisdiction – Sufficiency of Evidence – Abuse and Neglect.

In *Los Angeles County DCFS* .v *Superior Court* (2012) 211 Cal.App.4th 13, the juvenile court dismissed a petition under section 300, subdivision (f), (causing death of another child) filed with regard to an infant child on the ground that the child's 20-month old sibling had died while under the supervision of the minor's father. The Second District, Division 3, ordered issuance of a writ of mandate vacating the dismissal order. The sibling had died from dehydration and internal bleeding from the liver due to blunt abdominal trauma occurring one to three days before death. The infant's father was one of the persons who had care of the child during the last 12 hours. Medical experts testified that the child had visible bruises and her belly was distended. It would have been obvious she was in pain and needed immediate medical care. The sibling may have survived had she received timely medical attention. Per *In re Ethan C.* (2012) 54 Cal.4th 610, tort concepts of legal causation apply, and as it was indisputable that the infant's father's negligence was a substantial factor in the sibling's death, the infant was not safe in his custody.

In *In re Marquis H.* (2013) 212 Cal.App.4th 718, the Fourth District, Division 1, affirmed a juvenile court decision finding jurisdiction over a child of parents due to severe physical abuse on two grandchildren who were also in their custody. The reference in subdivision (a) to injuries on the child or the child's siblings does not limit jurisdiction but is only one example of when jurisdiction may be exercised based on physical abuse. A parent's abuse of an unrelated child may tend to show the child is at risk.

Jurisdiction – Sufficiency of Evidence – Failure to Protect.

In three cases, the courts found insufficient evidence supporting jurisdiction. First, in *In re Noe F.* (2013) 213 Cal. App.4th 358, the mother was arrested on a gang-related offense. She named relatives who were able to care for the minor while the mother was incarcerated. Although the Department filed a petition, alleging the mother's failure to

protect under section 300, subdivision (b), the minor was placed with one of the relatives the mother had identified. The Second District, Division 1, citing *In re S. D.* (2002) 99 Cal.App.4th 1068, reversed the juvenile court's finding of jurisdiction under subdivision (b). The mother's incarceration, without more, does not provide a basis for jurisdiction because there must be evidence indicating the child is exposed to a substantial risk of serious physical harm or illness.

Second, in *In re Destiny S.* (2013) 210 Cal.App.4th 999, the juvenile court sustained a petition under section 300, subdivision (b) alleging the mother placed the child at risk of harm by using marijuana and methamphetamine. The juvenile court found that mother had recently used these illegal drugs and this use could have caused the 11-year-child to often be tardy to school the previous year. On appeal, the Second District, Division 1, reversed on the grounds that the record lacked evidence the child was at the risk of suffering physical harm. There was no evidence the child was neglected. No paraphernalia was in the home. The house was neat and clean and provisioned with adequate food and utilities. The child attended school regularly and had no behavioral or discipline issues. The court also refused to consider stale reports it had received nine years earlier that the Department had closed. The court also found the allegation of "imminent harm through second-hand smoke" not established where the child said she could only smell a slight odor. The court rejected the Department's claim that jurisdiction was supported by the policy stated in section 300.2 of achieving children's safety through drug free homes. Before section 300.2 applies, a risk of physical harm must be shown.

In the third case, *In re Roberto C.* (2012) 209 Cal.App.4th 1241, the Second District, Division 7, affirmed a juvenile court order dismissing a petition for insufficient evidence under section 300, subdivision (b). In this case the infant minor fell unconscious while in the care of a babysitter. While he was hospitalized, the Department filed a petition alleging the minor had suffered a brain bleed due to possible non-accidental trauma. The dismissal was affirmed. The juvenile court did not abuse its discretion. Although there was evidence that the parents either inflicted the injuries or knew about it. The juvenile court was correct in weighing the evidence in making the determination under section 350, subdivision (b).

In *In re John M.* (2012) 212 Cal.App.4th 1117, the Second District, Division 8, affirmed a juvenile court finding of jurisdiction under section 300, subdivision (b). In this case, mother and the 11-year-old, blind, autistic minor were found by officers, sleeping in the back of the mother's SUV, not wearing clothes, dirty, and disheveled. They were homeless and lived in the car. Substantial evidence supported the finding that the mother's conduct placed the child at risk of physical harm as the mother's comments offered no indication that this was a unique situation unlikely to recur, and the mother had

rejected assistance from the father, who had offered to let the child bathe at his residence. Also, the minor's school records showed that mother did not ensure that the child attended school regularly, which placed him at risk in light of his special needs.

Finally in *In re R.C.* (2012) 210 Cal.App.4th 930, the Second District, Division 5, affirmed a finding of jurisdiction under subdivision (b), based on the father's physical abuse of the mother – choking and asking for a gun so he could shoot her -- in the presence of at least one of the children. There had been previous incidents, as well. The escalating violence supported the required finding of a substantial risk of harm, as the children could wander into an incident of domestic violence as it was occurring and be injured.

Jurisdiction – Sufficiency of Evidence – Sexual Abuse.[5]

In *In re D.G.* (2012) 208 Cal.App.4th 1562, the juvenile court sustained jurisdiction under section 300, subdivisions (b), (d), and (j) because the father had offered his minor stepdaughter money to perform sexual acts with him, and the mother had failed to take steps to intervene. On appeal, the parents alleged this showing was insufficient as a matter of law to show sexual abuse. The Second District, Division 1, rejected this argument and affirmed. The repeated acts evidenced abnormal sexual motivation which would irritate a normal child and invade her privacy and security. An actual touching is not required. Father's persistent sexual interest in the stepdaughter despite repeated rebuffs demonstrated a substantial risk that his conduct would escalate from verbal to physical molestation and that his interest would extend to the younger minor who was reaching the same age.

Jurisdiction – Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

"Home state" jurisdiction was resolved in two recent cases. First, in *In re Gloria A*. (2013) 213 Cal.App.4th 476, the minor was born in Mexico in 2004 and, after her mother killed her father, came with her mother to the United States. The mother was deported on January 21, 2009. In this case, the child's maternal grandfather, who was the temporary guardian pursuant to the order of a court in Mexico, came to the United States in February of 2009 to take custody of the child. The juvenile court asserted jurisdiction on February 18, when the mother's boyfriend refused to release the child to the grandfather, and placed the child with a cousin. Later, the grandfather used a modification petition under section 388 to assert that the juvenile court did not have "home state" jurisdiction (Fam. Code, sec. 3407, subd. (g)), and the juvenile court denied the petition. On appeal, the Second District, Division 1, reversed. The grandfather, due to his status as temporary guardian had standing as an aggrieved party. Although there was some evidence that the mother and child had crossed into the United States in 2008, there was no indication of

how long they lived in California before the mother's deportation in 2009, and thus the requirement of six consecutive months for "home state" jurisdiction was not established.

There was a similar result, but for a different reason, in *In re Nelson B.* (2013) 215 Cal.App.4th 1121, in which an undocumented, 16-year-old minor had come to California from Honduras via Maryland. The minor appealed the order of the juvenile court dismissing the dependency petition on the grounds there was no UCCJEA jurisdiction. On appeal, the minor claimed that California had "default" jurisdiction under Family Code, section 3421, subdivision (a)(4), as no other jurisdiction qualified. The First District, Division 1, rejected the contention, finding that the minor had lived in Maryland for six months before coming to California. His grandmother had physical custody and applied for temporary guardianship. His status in California, although exceeding six months was only a "temporary absence." Thus, Maryland was the minor's "home state."

Jurisdiction – Discovery and Evidence - Psychotherapist Privilege.

In *In re M. L.* (2012) 210 Cal.App.4th 1457, the minors were placed in protective custody due to the mother's mental incapacity and neglect. She had been diagnosed with schizophrenia and bipolar disorder and was off her medication when placed on an involuntary psychiatric hold after walking with the minors in 40-degree wet weather without proper clothing. During the jurisdictional hearing on a petition under section 300, subdivision (b), alleging, among other things, that the mother suffered from a mental illness that impaired her ability to provide adequate supervision for her children, the court overruled the mother's objection to the release of her past psychiatric records. The records were admitted into evidence and jurisdiction was sustained. On appeal, the mother contended the juvenile court erred in disclosing the records. The Fourth District, Division 2, agreed. The appellate court held that the juvenile court decides two questions: 1) whether to release the records, in whole or in part, to the opposing party; and 2) whether to admit the records into evidence. Records of services provided on voluntary and involuntary commitments are confidential pursuant to section 5328. This confidentiality is not waived merely by contesting jurisdiction in a dependency action. Here, the Department did not seek the records for investigation as required per section 5328, but to prove the petition. Moreover, the records were unnecessary because similar non-privileged information had already been admitted. And, at a bare minimum, the court should view the records in camera prior to ruling.

Jurisdiction – Evidence – Expert Opinion.

In *In re Roberto C.*, *supra*, 209 Cal.App.4th 1241, the non-accidental trauma case discussed above as a dismissal for insufficient evidence, the Department also challenged the juvenile court's ruling not permitting child abuse expert, Dr. Stewart, from testifying on Shaken Baby Syndrome. The reviewing court found no error. The record showed that

Dr. Stewart was permitted to express a broad range of opinions, including her opinions on causation. Thus, her ability to place her opinions before the court was not unduly limited. The ruling was a matter of weight to be given, not admissibility.

Disposition – Evidence – Hearsay.

In *In re Madison T.* (2013) 213 Cal.App.3d 1506, at the dispositional phase of a combined jurisdictional/dispositional hearing, the social worker testified, over the mother's hearsay objection, to the contents of a voice mail message left by a substance abuse counselor to the effect that the mother was not ready for placement of her child as she had not made sufficient progress in treatment. On appeal, the Fourth District, Division 1, affirmed. Section 358, subdivision (b), provides for the admissibility of hearsay evidence at dispositional hearings. In making a dispositional recommendation, a social worker may rely on hearsay, as long as the evidence is reliable, as it was here. In any event the admission of the evidence was not prejudicial in light of the other evidence presented showing the mother was not ready for placement of her child.

Disposition – Removal From Home.

In *In re Hailey T.* (2012) 212 Cal.App.4th 139, the parents took the infant sibling to the hospital when they noticed a petechia to his eye. Neither parent could explain how the injury occurred, but they suggested that the sibling, 4-year-old Hailey, may have injured him. One of two treating physicians found the injuries to be non-accidental, and on this basis, the juvenile court sustained a petition under section 300, subdivisions (b) and (j), and the minors were removed from the home. On appeal, the parents argued the order removing Hailey was not supported by substantial evidence. The Fourth District, Division 1, agreed and reversed. Although section 361, subdivision (c) provides that jurisdictional findings are substantial evidence the child cannot safely remain in the home, the record in this case did not support a finding that there was a substantial danger to Hailey. Hailey was never a victim of abuse and suffered no harm. She was verbal and able to articulate any abuse. She attended school where there were mandated reporters. Also important was the evidence that the parents were "good parents," as they participated in services at the earliest possible time, and there was no indication that they had abused Nathan. Less drastic alternatives to removal included return of the child to the parents with unannounced visits and services through a public health nurse. The father's counsel stated the father was willing to move out, if necessary. These alternatives should have been explored before removing Hailey.

In *In re John M.*, *supra*, 212 Cal.App.4th 1117, discussed above in the jurisdiction for failure to protect cases, the appellate court also found support for removing the child from the mother's home, because the mother had previously violated court orders, which supported the court in concluding that the minor could be placed in the mother's custody.

Disposition – Denial of Services - Prior Failure to Reunify.

In *J.A. v. Superior Court* (2013) 214 Cal.App.4th 279, the juvenile court denied reunification services under section 361.5, subdivision (b)(10), based on the father's previous failure to reunify with the same child. The father's petition for extraordinary relief was granted by the Third District on the grounds that the express language of subdivision permits bypass only when the prior dependency and failure to reunify concerned a sibling, not the same child. The Third District rejected *In re Gabriel K.* (2012) 203 Cal.App.4th 188, and followed *In re B.L* (2012) 204 Cal.App.4th 1111.

Disposition – Denial of Services – Child Abduction.

In *A.A.* v. *Superior Court* (2012) 209 Cal.App.4th 237, the Fourth District, Division 1, granted extraordinary relief in case in which the juvenile court had denied services under section 361.5, subdivision (b)(15). This section provides for denial of services where the parent willfully removes the child or a sibling from a placement, and refuses to disclose the child's whereabouts or to return the child. In this case, the minor had been placed with the mother at all times, and her erratic contact with the Department did not constitute an abduction or refusal to disclose the child's whereabouts.

Disposition - Placement with Non-Offending Parent.

In *In re Noe F*., *supra*, 213 Cal.App.4th 484, the case in which the Second District, Division 1, reversed a jurisdictional finding based solely on the mother's arrest, the court also invalidated the dispositional order awarding custody to father, the non-custodial parent because the court had not made the findings mandated under section 361.2, which also has been interpreted not to find detriment based on the custodial parent's arrest, standing alone.

In *In re A.J.* (2013) 214 Cal.App.4th 525, the Fourth District, Division 1, affirmed juvenile court orders placing the child with the biological father in Hawaii under section 361.2 and terminating jurisdiction. The mother had argued on appeal that the orders were in error because the court had not made a specific determination that continued supervision was unnecessary. Although, technically, since the father's presumed status was determined too late to qualify him to assume immediate custody under section 361.2, he did qualify for placement and dismissal under section 364. The Fourth District found the mother's argument "exalts form over substance" in light of the juvenile court's findings that the father was a committed responsible parent capable of providing a stable home for the minor, that there were no protective issues requiring continued jurisdiction, and by clear and convincing evidence, that the placement was in the child's best interest.

Therefore, the order was appropriate.

Review Hearings - Adequacy of Services.

In *In re K.C.* (2012) 212 Cal.App.4th 323, the trial court had originally removed the children from the mother's care and placed them with the father because they had been injured while in the mother's care, but they were eventually removed from him, as well, because of concerns about his mental health. A psychological evaluation recommended that his services would include a medication evaluation. Although father first said he would not take medication, he did indicate a willingness to comply with the recommendations of the evaluation. The Department's only effort to obtain this evaluation was to send father to a mental health clinic. The clinic found that father did not meet its criteria for treatment and declined to undertake the evaluation. The Department made no further attempts to secure an evaluation, nor was it established that appellant could not parent if on the appropriate medication. The juvenile court at a subsequent review hearing terminated the father's services. The Sixth District reversed. The Department had identified father's mental health issues but had not addressed them adequately. The father's reluctance to take medication did not make the efforts futile as this was perhaps a result of his illness, and he had attempted three times to secure the required evaluation. Services must be tailored to meet the particular needs of the family, and parents with mental health issues have special challenges. The Department's failure to seek medication for the father rendered the services inadequate.

In *Christopher D*. v. *Superior Court* (2012) 210 Cal.App.4th 60, the Fourth District, Division 1, in granting the father's petition for extraordinary relief, found the reasonable services finding supported by sufficient evidence as to the six month period in which he was incarcerated, but not supported as to the following three months when he lived in a drug rehabilitation center. The services issue focused on the question of visitation with the three-year-old child. The curtailment of visits while the father was in jail was reasonable in light of the child's demonstrated fears and anxieties, but the court had ordered reasonable visits during the rehabilitation program time period and the provision of only two visits in three months was inadequate when based on the social worker's justification that she was "too busy" and the program "too far" away. In light of the fact that the parent's relationship with a child could be lost during this time period, the error was not harmless and all services were to be restored.

Review Hearings – Termination of Services.

In *In re Katelyn Y.* (2012) 209 Cal.App.4th 871, the Fourth District, Division 1, found that the juvenile court did not abuse its discretion at the six month review hearing in granting the Department's section 388 modification petition and terminating reunification

services to the mother but extending father's services. Nothing in section 388, subdivisions (c)(1)(B) or (c)(4) compel the court to extend services to the second parent merely because the other parent continues to receive services. The evidence that the mother had failed to participate in services created a substantial likelihood that she would not reunify with the minor. The minor's best interests would not be furthered by continuing her services, nor would they ultimately be in the child's best interests, as the court properly found that the mother would not utilize additional services.

Modification Petitions – Section 387 - Limitations on Reunification Services.

In *In re T.W.* (2013) 214 Cal.App.4th 1154, T.W. was originally placed with her father, due to the mother's excessive discipline of a sibling in T.W.'s presence. Two years later the juvenile court sustained additional allegations alleging that T.W. was a risk because of the father's sexual abuse of T.W.'s half-sibling, and the child was then placed with the mother. Finally, several months later, a petition under section 387 alleging that the mother was allowing the father in the home, was sustained. The parents and the minor appealed, the parents challenging sufficiency of the findings sustaining the petition, and the minor challenged the order granting the mother additional services. The Fourth District, Division 1, rejected the parents' contention because the mother did not participate in therapy, did not understand the dynamics of sexual abuse, and did not keep the father out of the home although repeatedly requested to do so. The father refused treatment. The agency had considered less drastic alternatives such as a safety plan, but concluded there were no services or alternatives available to ensure the minor's safety.

As to the minor's argument in *In re T.W.* that the 31 months of services had exceeded the 12 months maximum under section 361.5, beginning from the date of initial detention, the court found that the limitation on services begins on the date of disposition, not detention (following *In re A.C.* (2008) 169 Cal.App.4th 636, and disagreeing with *In re N.M.* (2003) 108 Cal.App.4th 845). Also, since the first two dispositions in this case in 2009 and 2011were under section 361.2, not section 361, the limit on services did not apply on those occasions. Family reunification services only commenced in 2012 when the section 387 petition was granted and the child removed from both parents' custody. The section 361.5 limitation did not apply until that time. However, the court remanded to the juvenile court for an order containing a proper section 361.5 analysis, as the court's previous order erroneously designated the services as being granted under exceptional circumstances.

Modification Petitions – Section 388.

In *In re Marcelo B.* (2012) 209 Cal.App.4th 635, the four-year-old child had been

the subject of dependency proceedings in 2009 because of general neglect occasioned by the parents' alcoholism, services were offered and the family was reunited. Marcelo was again removed when a subsequent petition was sustained in 2011 because the father, intoxicated, drove with Marcelo in the car. This time services were bypassed. The father filed a petition to modify to reinstate services on the grounds of his participation in a 12-step program. The juvenile court denied his petition and terminated parental rights. On appeal, the Second District, Division 2, affirmed. The juvenile court did not abuse its discretion in denying the section 388 petition. The father had received extensive therapy for his alcoholism, and had relapsed only four months after reunifying. His belated choice to return to therapy was no guarantee that he would achieve and maintain sobriety.

Parental Rights Termination - Beneficial Relationship Exception.

In *In re Marcelo B.*, *supra*, the case in which the reviewing court had upheld the order of the juvenile court denying the father's petition to reinstate reunification services, the court also upheld the juvenile court's order terminating parental rights. The beneficial relationship exception under section 366.26, subdivision (c)(1)(B)(I) did not apply because the parents' supportive relationship with the child was outweighed by the benefits a stable home would offer. The parents' alcohol abuse leading to neglect and domestic violence had not been dealt with, and led to missed court hearings and missed visits with the child. The child's current placement offered stability for the four-year-old child who had spent half of his life placed out of his parents' home.

Parental Rights Termination – Tribal Customary Adoption Exception.

In *In re A.M.* (2013) 215 Cal.App.4th 339, at the first selection and implementation hearing, guardianship was chosen as the plan for A.M., an Indian Child. At that time, it was anticipated that the intervenor, the Pit River Tribe would investigate a TCA option, but no action was taken on this by the tribe at either the first or second selection and implementation hearing. At the second hearing, the juvenile court terminated parental rights. On appeal by the mother and the tribe, the tribe challenged the juvenile court's courts selection of adoption, arguing a TCA would assure the minor would be more connected with the tribe. The Third District affirmed, holding that under section 366.24, the only way a TCA option could become an alternative plan in this case would be either the submission of a TCA to the juvenile court, or the tribe's designation of TCA as a plan so as to seek a 120 day continuance for the tribe to consider TCA, and neither alternative was presented to the juvenile court.

Parental Right Termination – Family Code section 7827.

In *In re Marriage of E. and Stephen P.* (2013) 213 Cal.App.4th 983, the father's parental rights were terminated under Family Code section 7827 in accordance with the expert opinions of two mental health experts. They opined he had a mental disability that made him unable to care for his child in the foreseeable future. On appeal, the father urged that it was error for the court not to have sought a social study by a licensed clinical social worker within the meaning of sections 7850 and 7851. The Second District, Division 5, having found the father forfeited any error by not objecting to the court not seeking the studies, also found that sections 7850 and 7851 did not apply to terminations under section 7827 because the studies focus on the child's situation and section 7827 focuses on the parent's situation. The reviewing court also found that the "least detrimental alternative" was satisfied by the court's finding that adoption was in the child's best interest, and that the best interest finding was supported by substantial evidence.

Parental Rights Termination – Unfitness or Detriment Finding.

In *In re T.G.* (2013) 215 Cal.App.4th 1, the minor was removed from the mother when he tested positive for cocaine at birth. Father requested a paternity finding but the Department was unwilling to pay for the tests. Father was eventually named the presumed father, after the matter had proceeded through jurisdiction and disposition of the child out of the parents' homes and to a permanent plan of guardianship. The father having finally received his blood test results showing his paternity, contested the next hearing. Although the court initially considered ordering six months of reunification services, the ultimate order was termination of parental rights. On appeal, the First District, Division 5, reversed and remanded the matter to the juvenile court to determine whether a finding of unfitness could be made by clear and convincing evidence under then-existing circumstances. The court had felt that services were not in the child's best interests, but had not held that placement of the child would be detrimental. This finding must be made before terminating the parental rights of a presumed father.

Placement.

In *In re B.S.* (2012) 209 Cal.App.4th 246, at a review hearing conducted under section 366.21, subdivision (f), the court denied the father's request that the youngest child be placed with him in Texas. On the father's appeal, the Second District, Division 1, held that the trial court did not abuse its discretion in so ruling when Texas twice refused to conduct a study of his home under the Interstate Compact on the Placement of Children (ICPC). Under section 366.21, a placement must be denied when there is a substantial risk of detriment to the child's safety, or physical or emotional well-being. While it is true that an ICPC is not required for a placement with a parent, the refusal of Texas authorities to

supervise the case was significant in a case in which California courts could not protect the child. The father had a criminal history and a current status as a sex offender.

Minors and Minors' Counsel.

There have only been a few recent cases deciding the extent of services available when the minor turns 18 years old. In *In re K.L.* (2012) 210 Cal.App.4th 632, the Fourth District, Division 1, affirmed an order denying further reunification services to the mother in this situation at the 12-month hearing under section 366.21, subdivision (f). Financial support is available to the non-minor dependent potentially to age 21, when there is a transitional independent living case plan. But here K.L. was not participating in such a plan and the court had not selected long term foster care as the plan. Reunification services continue only to the time of the review hearing, and there is no goal of returning the child who has turned 18 to the parent because a parent cannot have custody of an adult.

Right to Appointed Counsel – Prospective Adoptive Parents.

In R.H v. Superior Court (*San Diego Health and Human Services Agency*) (2012) 209 Cal.App.4th 364, the Fourth District, Division 1, held that although a prospective adoptive parent has a right to notice and to participate in a hearing pursuant to section 366.26 concerning the removal of a child from the home, there is no statutory authority for appointment, nor does any constitutional provision compel appointment of counsel for a prospective adoptive parent. Also, the prospective adoptive parents in this case had due process rights due to their standing as de facto parents, but they lost that status when the child was removed from that placement due to physical abuse of the siblings. Even assuming the juvenile court erred in not appointing counsel, the error was harmless.

Right to Appointed Counsel – Ability to Pay for Legal Costs.

In *In re S.M.* (2012) 209 Cal.App.4th 21, the county asked for an order requiring the mother to pay for the cost of legal services previously rendered. The mother appeared without counsel at her requested hearing on the financial evaluation officer's finding of her ability to pay. The juvenile court ordered her to pay $20 per month. On appeal, the Fourth District, Division 1, remanded for further hearing on the mother's ability to pay legal costs. In determining the parent's ability to pay for her appointed counsel in a juvenile court dependency proceeding per section 903.45, the court may not consider Supplemental Security Income (SSI) benefits. But the written notice to mother of her right to counsel at the hearing on ability to pay was adequate notice.

Appeals and Writs – Standing.

In *In re Michael A.* (2012) 209 Cal.App.4th 66, the minors' grandmother, a de facto parent, appealed an order removing the minors from her custody under section 387, and alleged the court had not complied with ICWA notice and inquiry requirements, both at the outset of the proceedings and after the section 387 petition was filed. The Third District found the grandmother did not have standing because only an Indian Custodian may petition under section 224.2, subdivisions (a) and (c), and 25 U.S.C., section 1914, The grandmother was not an "Indian Custodian," under 25 U.S.C. section 1903(6) because she did not have custody of the minors.

Appeals and Writs – Forfeiture.

Two cases were concerned with forfeiture of issues on appeal due to the failure of the party to object in the trial court. First, in *In re Marriage of E. and Stephen P. supra*, 213 Cal.App.4th 983, the father's parental rights were terminated under Family Code section 7827 in accordance with the expert opinions of two mental health experts that he had a mental disability that made him unable to care for his child in the foreseeable future. On appeal the father urged that it was error for the court not to have sought a social study by a licensed clinical social worker within the meaning of sections 7850 and 7851. The Second District, Division 5 found the father forfeited by failing to object in the trial court. Sections 7850 and 7851 are procedural and evidentiary rather than jurisdictional and are therefore subject to the rule of appellate forfeiture.

The Second District, Division 8, came to a similar conclusion in *In re E.A.* (2012) 209 Cal.App.4th 787. In *In E.A.*, a father's appeal from a dispositional order removing E.A. from parental custody, the juvenile court ordered services including monitored visitation once the father was released from his incarceration. Counsel for father objected to the orders, including the visitation order, but did not state reasons for his objections, which rendered them meaningless. On appeal, the reviewing court found the objections ineffectual, and specifically held forfeited the father's appellate contention the trial court erred in not having made a detriment finding before limiting visitation.

ENDNOTES

1. This article covers developments from September 1, 2012, to May 5, 2013. The article is published at http://www.capcentral.org/juveniles/dependency/case_compendiums/index.asp,

2. Bradley Bristow is a Staff Attorney at Central California Appellate Program. He wishes to thank CCAP Staff Attorneys Melissa Nappan, John Hargreaves, Colin Heran, and Laurel Thorpe for their assistance with this article.

3. All statutory references are to the Welfare and Institutions Code unless otherwise stated.

4. In *In re I.J.*, *supra*, the California Supreme Court disapproved the decisions In *In re Rubisela E.*, *supra*, *In re Maria R.*, *supra*, and *In re Alexis S.*, *supra*, to the extent the decisions are inconsistent.

5. Recent decisions that precede but are consistent with *In re I.J. supra*, are *Los Angeles County Department of Children and Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, in which the California Court of Appeal, Second District, Division 5, reversed a juvenile court decision dismissing jurisdiction over petition filed for a same gender half-sibling under subdivisions (a), (b), and (j), and *In re Ricky T.* (2013) 214 Cal.App.4th 515, in which the Second District, Division 3, affirmed jurisdiction under subdivisions (b) and (d) as to a grandson of the maternal grandmother guardian, when the grandfather had been convicted of sexually abusing his step-granddaughter.