Article originally posted at:
http://www.capcentral.org/juveniles/dependency/case_compendiums/index.asp

GUARDIANSHIP CASE REQUIRES REFERRAL TO CPS IN CASES WHERE PARENTAL UNFITNESS ALLEGED.

Dependency Update[1]

By Bradley Bristow,[2] **CCAP Staff Attorney**

In *Guardianship of Christian G.* (2011) 198 Cal.App.4th 1235, the paternal uncle filed an application under Probate Code section 1513 to obtain guardianship of his developmentally delayed autistic nephew. The minor and his father were living in filthy and unsafe conditions. The father had mental problems which included hoarding. The father opposed the guardianship, alleging the uncle's criminal history and substance abuse. The probate court granted the guardianship. The First District, Division 2, reversed. In a case in which an allegation of parental unfitness is made, the matter must be referred to Child Protective Services to determine whether dependency proceedings should be initiated. As this provision of the Probate Code is intended to work with the dependency laws as a cohesive statutory scheme, referral was required in this case, and the failure of the court to do so was not harmless.[3]

Although it may be to early too see the extent to which *Guardianship of Christian G.* provides parents with a defense to terminations of parental rights under Probate Code section 1516.5 when the matter had not previously been referred to CPS, this contention has already been raised in 2011 cases.[4]

Jurisdiction – Procedure – Marriage and Emancipation of Minor.

In *In re J.S.* (2011) 199 Cal.App.4th 1291, the Third District reversed a juvenile court's order denying the Department's motion to terminate jurisdiction in light of the minor's marriage and emancipation. Here jurisdiction had originally been established under section 300, subdivision (a), but the child had been placed with the mother without any restrictions on her control or custody. The minor married in Nevada with the mother's consent. The Third District noted that although California Rules of Court, rule 5.678(d) permitted the juvenile court to limit the parent's power to consent to the marriage, the court had not so acted. The minor was emancipated by marriage, and the juvenile court had no jurisdiction over an emancipated minor. (Fam. Code, secs., 7002, subd. (a), 7050,

subd. (c).)

Jurisdiction – Procedure – Power to Direct CPS To File Petition.

In *In re M.C.* (2011) 199 Cal.App.4th 784, the minor ran away from his home in Guatemala, and was found homeless in San Francisco. The Department investigated and declined to file a dependency petition. Legal Services for Children served as counsel for the minor and filed an application pursuant to section 331 seeking court review. The juvenile court directed the Department to take the minor into custody; and, on the Department's appeal, the First District, Division 3, affirmed. The juvenile court has the power under section 331 to make this order. Also, in light of the *parens patriae* role of the court in the juvenile court system, the order does not violate separation of powers.

Jurisdiction – Procedure – Evidence.

In *Karen P. v. Superior Court* (2011) Cal.App.4th the father subpoenaed medical records involving the child's sexual history. The child filed a motion to quash, asserting physician-patient privilege within Evidence Code section 994. The superior court found the child's medical condition was at issue within the meaning of the patient-litigant exception, section 996. The Second District, Division 5 granted the minor's petition for extraordinary relief. The child did not tender her medical condition at issue by disclosing the abuse and submitting to a forensic medical examination. The section 996 exception was not triggered by her disclosures, and the privilege was not waived. Further, the filing of the petition by DFCS did not extinguish the privilege because DFCS did not represent the child.

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

Jurisdiction – Sufficiency of Evidence -- Failure to Protect.

In *In re B.T.* (2011) 193 Cal.App.4th 685, the mother challenged the sufficiency of the evidence supporting juvenile court jurisdiction where the sole evidence in support was that she had a relationship with a fifteen year old boy, resulting in the conception of the baby, B.T., and mother drank beer. The Fourth District, Division One reversed. Where all other evidence showed the mother had an exemplary record of raising her other children, there was no basis for a finding she would abuse or neglect the baby.

Jurisdiction – Sufficiency of Evidence – Risk of Serious Emotional Damage.

In *In re A.J.* (2001) 197 Cal.App.4th 1095, the juvenile court sustained jurisdiction under

section 300, subdivisions (b), (c), and (g), based on allegations the mother made false allegations of kidnaping against the father, and attempted to have the police remove the child from the father through use of a temporary restraining order against the father obtained by false pretenses. The juvenile court removed the child from the mother, awarded custody to the father and dismissed jurisdiction. On the mother's appeal, the Fourth District, Division 3, found the mother's relentless and unreformed behavior caused the minor to suffer serious emotional damage and placed her at risk of further serious emotional harm. The attempt to have the police remove the minor was a traumatic ordeal for the minor. Her nightmares, fear of mother, and belief that mother was crazy, demonstrated she had suffered emotional damage and that there was a substantial risk of severe emotional damage within the meaning of subdivision (c).

Jurisdiction – Sufficiency of Evidence – Sexual Abuse.

In *In re R.C.* (2011) 196 Cal.App.4th 741, the minors were detained when the twelve-year-old minor reported that a 32-year-old in the home had French kissed her three times, and they were in love. Although the petition was sustained, the juvenile court dismissed the allegation of sexual abuse filed under section 300, subdivision (d) on the grounds the conduct was inappropriate but not sexual in nature. The Second District, Division 7 reversed and remanded, holding the conduct was in fact sexual in nature. French kissing between an adult and a 12-year-old child who describe themselves as "in love" is inherently sexual.

Jurisdiction – Sufficiency of Evidence – Failure to Provide for Support.

In *In re Anthony G*. (2011) 194 Cal.App.4th 1060, the Second District, Division 1, reversed a jurisdictional finding that the child was without provision for support. Although the father failed to support the child and the mother was struggling financially, the child was well cared for in the home of the mother and the grandmother, which means the child was supported.

Jurisdiction - Sufficiency of Evidence – Cruelty.

In *In re D.C.* (2011) 195 Cal.App.4th 1010, the mother, who suffered from mental illness, held her child under water for about ten seconds. The child struggled and was rescued by others. The mother said she was trying to spiritually cleanse the child and get her over her fear of water. Jurisdiction was sustained under section 300, subdivisions (b), (g), and (i). On appeal, mother challenged only the sufficiency of the evidence supporting the allegation under subdivision (i), on the grounds that she did not intend to harm the minor. The Sixth District affirmed. Subdivision (i) requires an intentional act inflicting pain or

distress, but does not require an intent to harm the child. The evidence was sufficient in showing the mother knew her child was afraid of the water when she held her down.

Disposition - Placement with Non-Offending Parent.

In *In re Miguel C.* (2011) 198 Cal.App.4th 965, the juvenile court removed the minor from the mother's custody, placed the child with the father, and ordered reunification services for the mother. On appeal the mother argued removal was inappropriate because there was an alternative to removal not considered by the court – placement with the father without removing the child from the custody of the mother. The First District, Division 5, held this option was not available. Section 361.2 and California Rules of Court, rule 5.695, require removal before awarding custody to the non-custodial parent. Also, there was ample evidence of substantial danger to the minor if returned to the mother's custody.

Review Hearings - Notice.

In *In re A.D.* (2011) 196 Cal.App.4th 1319, the mother arrived late, after the 12-month hearing was completed and moved the court to reopen the matter because she was not given proper notice and a copy of the social study as provided in section 293, subdivision (c). The juvenile court declined to do so and placed the child in long term foster care. On the mother's appeal, the Fourth District, Division 3, affirmed. A contention of structural error failed. The California Supreme Court in *In re James F.* (2008) 42 Cal.4th 901, 904, cautioned against using a structural error standard in civil cases where the lack of notice did not affect the outcome. Any error was harmless. Here the mother had been offered services for three years and had not participated meaningfully in the plan. There was no additional time available for services. Also, it was not shown how the mother's tardiness on the date of the hearing was caused by her lack of notice.

Review Hearings - Termination of Services.

The Fourth District, Division 3, denied a petition for extraordinary relief in *Earl S. v. Superior Court* (2011) 199 Cal.App.4th 1490. Father, who was incarcerated during the pendency of the case, contended the juvenile court erred when it terminated services at the 18-month review hearing despite its finding that inadequate services had been provided during the final review period. In denying the writ, the court noted the setting of a section 366.26 hearing does not depend on a reasonable services finding, and the court had found that *overall* services had been reasonable. Also, recent amendments permitting the court to continue a hearing do not apply where there was no possibility the minor could be returned within the extended time period and no chance the father would benefit from services. Thus, section 366.22, subdivision (b) did not prevent the setting of a section 366.26 hearing. The father had not objected to the reasonableness of services at the 6-

month and 12-month review hearings, and would not be permitted to seek an extension based on inadequacy of services.

Modification Petitions – Section 388 – Due Process.

The court granted a hearing on the parents' section 388 modification petition and set it to be heard with the section 366.26 hearing. The court heard one session, and continued the matter. On the date set for continued hearing, the parents checked in at the 8:30 a.m. calendar call but did not answer pages when the court reconvened two hours later. The father's attorney represented that the father had gone to his treatment program "to obtain a signed certificate." Counsel requested "a continuance" to the afternoon calendar. The court denied the request and proceeded without the parents, denying the section 388 petition and terminating parental rights. The Second District, Division 4, reversed, finding the court abused its discretion in not holding the matter over to the afternoon calendar. This was the only way the parents could put on their case, as they were the sole witnesses. There was no basis for the trial court's belief that a two-hour continuance would be detrimental to the child, and a short continuance would not delay this case beyond any deadline. The section 366.26 was also reversed because a fair hearing on the section 388 motion was a procedural predicate to proceeding on the section 366.26 hearing.

Modification Petitions - Section 388 - Sibling Petitions.

In *In re E.S.* (2011) 196 Cal.App.4th 1329, appellant minor had been placed in a group home, apart from two siblings who were placed with foster parents who wanted to adopt. The trial court denied his petition for modification under section 388, requesting either reunification with his siblings or an order preventing their adoption. On appeal he argued the court deprived him of due process in not setting a hearing on the petition. The Fourth District, Division 2 affirmed. The petition only showed that the minor was bonded to his siblings, not that they were bonded to him. There was no showing the proposed order was in their best interest. In fact, the evidence was to the contrary in light of the past incidents of aggression by the minor to his siblings. Also, there was no showing of a due process right to cross-examination on a section 388 petition.

Parental Rights Termination - Finding of Detriment.

In *In re Z.K.* (2011) 201 Cal.App.4th 51, a case described by the appellate court as representing "a mother's worst nightmare," mother's infant son was taken by his father. Mother returned to Ohio but never stopped looking for her son. By the time she found him, he had been removed from the father in a dependency proceeding which had progressed to the point of permanency planning. Mother contacted the Department in Tehama County and expressed her desire to take custody of the minor. When an ICPC report did not suggest that mother met the Department's expectations, the Department

sought and obtained termination of her parental rights without any proof mother had abandoned, abused, or neglected the minor, or that his return to her custody would be to his detriment. The Third District reversed, finding a due process violation when the mother's parental rights were terminated without a finding of detriment, and also concluding that there was insufficient evidence to support a finding of detriment. The trial court was directed to place the child with his mother.

Parental Rights Termination - Beneficial Relationship.

In *In re C.F.* (2011) 193 Cal.App.4th 549, the mother contended on appeal that she had established the beneficial relation exception. The Fourth District, Division One, disagreed. The mother's visitation was consistent at times, but not at others. Sporadic visitation was insufficient to establish even the first prong of the exception. Also, she failed to establish she played a regular role in the children's lives. They looked forward to seeing her and had an emotional bond with her, but they looked to the relative guardians to meet their needs. Merely because there was some benefit of maintaining the relationship did not establish the exception (distinguishing *In re S.B.* (2008) 164 Cal.App.4th 289).

Post-Permanency Review Hearings – Right to Contested Hearing.

In *In re J.F.* (2011) 196 Cal.App.4th 321, the 15-year old minor was in a permanent plan of long term foster care. When the social worker submitted a report stating the minor did not want to go home, the mother made an offer of proof that the visits had gone better than reported by the social worker and the minor might want to go home. The juvenile court denied a contested hearing, finding the offer of proof inadequate. The Fourth District, Division 1, reversed. First, section 366.3 does not require an offer of proof for a contested hearing. Second, the due process protections of notice and right to a hearing do require a contested hearing in this situation. Long term foster care, unlike plans of adoption or guardianship, is not necessarily a stable placement. The court is required to consider all options available to obtain a permanent home for the child, including possible return of the child to the custody of the parent. The child and the parents have an interest in being heard and the court has the duty to make an informed, accurate decision. The error in this case in denying a contested hearing was prejudicial under any standard, as the Department was unable to offer a more stable permanent plan, and there were conflicting accounts whether the minor wished to visit with or possibly live with his mother.

Post-Permanency Review Hearings - Guardianships – Reunification Services.

In *In re S.H.* (2011) 197 Cal.App.4th 1542, the minor's permanent plan was guardianship after the mother had been bypassed for reunification services. Subsequently, the guardian requested termination of the guardianship, and a hearing was scheduled. The Department recommended a new guardianship. The juvenile court refused to consider the mother's

application for reunification services. The First District, Division 3, affirmed. The juvenile court erred in not considering the parent's application because section 366.3 requires consideration of services whenever there is any change in the guardianship (citing *In re R.N.* (2009) 178 Cal.App.4th 557). However, the error was harmless in this case where it was not reasonably probable that the court would have granted services.

Termination of Jurisdiction.

In *In re J.S.* (2011) 196 Cal.App.4th 1069, the juvenile court having awarded custody to the non-offending father, terminated jurisdiction without expressly stating reasons for the dismissal. On appeal, the mother argued the decision and the failure to state reasons were in error. The Sixth District affirmed. Although the juvenile court is required under section 361.2, subdivision (c) to state reasons in writing or in the record, any error in the present case was harmless where there was no reasonable probability of a different result absent the error. The court had indicated that issues between the parents could be resolved through the family court. Also, the Department mentioned the availability of voluntary services. Thus, the juvenile court's decision was not an abuse of discretion.

Paternity – Voluntary Declarations.

In *In re Levi H.* (2001) 197 Cal.App.4th 129, the minor, Levi, was born to Jade and Andrew. Andrew signed a voluntary declaration of paternity. Jade and Andrew subsequently married and divorced. Andrew stopped seeing Levi. Michael and Jade married, and another minor, Maddox, was born. Levi and Maddox were removed when Maddox received a head injury while in Michael's care. The juvenile court, ultimately denied Michael's request to be designated the presumed father, removed the children and placed them with their grandparents. On appeal, the Fourth District, Division 1, affirmed. As a matter of law, the voluntary declaration of paternity trumped any presumption under Family Code, section 7611, subdivision (d).

Paternity – Presumed Parent Determination.[6]

In two cases, appellate courts found the juvenile court did not adequately resolve questions of presumed paternity. First, in *In re M.C.* (2011) 195 Cal.App.4th 197, the juvenile court found the minor had three presumed parents: the biological mother, the biological mother's wife who married her before the minor's birth, and the biological father who promptly came forward and demonstrated a commitment to the minor. The juvenile court did not resolve the conflicting claims. The mothers appealed the finding the father was a presumptive parent. The father appealed the court's failure to place the child with him as a non-offending parent under section 361.2. The Second District, Division 1, reversed and remanded the matter to the juvenile court to resolve the parties' claims. The Supreme

Court has repeatedly rejected the notion of paternity or maternity where that would result in there being three parents. The issue of the conflicting parentage presumptions should be resolved based the juvenile court's determination as to which of the presumptions is supported by weightier considerations of policy and logic. The father's appeal was not ripe as his status as a non-offending parent depended on the outcome of the paternity/maternity decision.

Second, In *In re P.A.* (2011) 198 Cal.App.4th 974, the minor came to the juvenile court's attention as a result of the domestic violence between the mother and the stepfather, Roger. When genetic testing established Alvaro was the father, the court entered judgment of paternity in his favor, finding the biological determination rebutted the presumption under Family Code section (d) supporting Roger. The Fourth District, Division 1, reversed, holding that under section 7612, the court's determination must be based upon a weighing of considerations of policy and logic. Upon remand, the juvenile court was permitted to consider circumstances as they have developed since the parentage determination. The court distinguished its previous decison in *In re Levi H.*, *supra*, which held a declaration of paternity trumped any other presumption. A determination of parentage does not have the same legal significance as a judgment of paternity based on a declaration of paternity.

Paternity – Significance of a Biological Paternity Determination.

Notwithstanding the ultimate importance of the court's weighing the considerations of policy and logic in determining which presumptions, if any, to apply, biological testing of alleged biological fathers continues to be crucial. In *In re J.H.* (2011) 198 Cal.App.4th 635, the Fourth District, Division 1, held the trial court erred in not making a determination of biological paternity, as required by California Rules of Court, rule 5.635(h). This step could not be skipped merely because the court had otherwise followed correct procedures in deciding whether or not to grant an alleged father presumed father status. This alleged father was not disqualified from presumed father status, and it was unlikely the child would reunify with the other father, who was in prison The matter was remanded so the juvenile court could make the determination of biological paternity.

Placements.

In *Samantha T. v. Superior Court* (2011) 197 Cal.App.4th 94, the minors' counsel sought review by writ of the juvenile court's "Nonnrelated extended family member" ("NREFM") placement of the children with mother's friend under section 362.7. The Fourth District, Division 1, granted the writ, concluding the juvenile court abused its discretion in so placing the children. Section 362.7 defines NREFM as any adult care giver who has an established familial or mentor relationship with the child. Here, the mother's friend had a long term relationship with the family but did not have a close relationship with the

children, so she did not qualify as an NREFM. The court also found no basis to extend the statute beyond its express terms as the placement order in this case was not intended to enhance reunification or otherwise place the children in a home sensitive to their backgrounds. There were numerous other families willing to offer a permanent home for the children. Finally, placement with someone having close ties with the mother presented obvious risks to the minor's stability and well-being.

De Facto Parents.

In *In re Bryan D.* (2011) 199 Cal.App.4th 127, the 13-year-old minor was removed from his grandmother after she left him home alone and went to visit family in Mexico. The juvenile court denied her applications to be named his presumed mother and de facto parent. On appeal, the Second District, Division 8, found no basis for granting the grandmother presumed parent status because she had not held herself out to the community as being his parent. But the juvenile court abused its discretion in not finding her to be a de facto parent when she had raised the minor for several years and otherwise satisfied the criteria set forth in *In re Patricia L.* (1992) 9 Cal.App.4th 61. Unlike the situation in *In re Keisha E.* (1993) 6 Cal.4th 66, the grandmother's actions were not fundamentally inconsistent with the parental role such that she lost her privilege to participate in the juvenile court proceedings.

Indian Child Welfare Act – Notice.

In *In re D.W.* (2011) 193 Cal.App.4th 413, the father appealed a juvenile court order terminating his parental rights, claiming an error in providing notice to the three Cherokee tribes under the Indian Child Welfare Act ("ICWA"), 25 U.S.C. section 2501, in that the paternal grandmother's name was identified as "Maryanne R." when in fact her name was Marianne Francis R. The Third District affirmed, finding any error harmless. The father had not shown the error would have thwarted a search that included her last name, birth date, and birthplace.

In *In re Hunter W.*, *supra*, 200 Cal.App.4th 1454, previously discussed in connection with section 388 petitions, the Second District, Division 4, found no error in the trial court's refusal to require further ICWA notice based upon the mother's representation that the child may have Indian heritage through the biological father or his family. The mother provided no contact information on the father or his family members. This information was held to be too speculative to trigger notice to tribes or the Bureau of Indian Affairs.

Visitation Orders.

In *In re A.C.* (2011) 197 Cal.App.4th 796, at a disposition hearing, the court ordered sole legal and physical custody to the father with supervised visitation for mother. The court ordered the father and mother were to agree on a monitor and, in the absence of an agreement, the father would choose the monitor. The minute order said the parties were to determine supervised visitation for the mother. The mother appealed, alleging the order was an improper delegation of the court's power to determine visitation within the meaning of *In re Chantal S.* (1996) 13 Cal.4th 166. The Second District, Divsion 4 disagreed and affirmed. When there is a conflict between oral and written orders, the oral version usually prevails, as here. The appellate remedy is to direct modification of the written order.

Juvenile Court Records - Administrative Remedies.

In *In re C.F.* (2011) 198 Cal.App.4th 454, the mother filed a motion in the juvenile court for an order directing the Agency to change its records from "substantiated" to "unfounded" and remove the mother's name from the Child Abuse Index after jurisdictional/dispositional findings were reversed by an appellate court and a remittitur had been issued. The juvenile court, treating the request as a petition for writ of mandate, denied it for failure to exhaust administrative remedies, and the Fourth District, Division 3, affirmed. The mother had not commenced grievance procedures provided by Penal Code section 11164 et seq. The juvenile court had no jurisdiction over the matter.

Appeals and Writs – Standing.

The California Supreme Court in *In re K.C.* (2011) 52 Cal.4th 231, held that a father, who did not contest the juvenile court order terminating his parental rights, could not challenge the contemporaneous order denying the grandparents' request for placement. As the issue is whether the party is "aggrieved," and the father is only aggrieved if the order advanced his claims that parental rights should not be terminated, he was not aggrieved because his only legal relationship with the child was as "father." Although he might be a "brother" to the child if the child was placed with the grandparents, this was not a legal relationship making him "an aggreived party."

But it appears that *In re K.C.* supports the holdings in *In re H.G.* (2006) 146 Cal.App.4th 1, and *In re Esperanza C.* (2008) 65 Cal.App.4th 1042, which state the parents' legal interest in maintaining the family extend beyond receiving reunification services, and they have standing even after services have been terminated.

In *In re J.T.* (2011) 195 Cal.App.4th 707, the juvenile court terminated parental rights of J.T.'s parents. J.T.'s adult sister appealed, stating she had a legally cognizable interest in maintaining a relationship with J.T. The Third District dismissed the appeal. The sister did

not have standing to assert the minor's interest on his behalf but only had standing to assert her own rights and interests. As an adult, the sister's interests were not impacted by her relationship with the mother, and she could maintain a relationship with J.T. regardless of whether the mother's rights were terminated.

Appeals and Writs – Forfeiture.

In *In re N.M.* (2011) 197 Cal.App.4th 159, the 11-year-old minor was detained following an incident in which she was nearly hit by her father's recklessly driven vehicle, and she reported her father had physically abused her. The father refused to sign a safety plan because he felt it would be an admission of guilt. Instead, a settlement was reached under which the petition was amended to remove physical abuse allegations other than the incident with the truck and father agreed to address any physical abuse issues in therapy. On appeal, father contended the petition and the evidence were inadequate. The Fourth District, Division 1, found father had forfeited any challenge to a petition as to which he had negotiated changes. The court distinguished *In re Tommy E.* (1992) 7 Cal.App.4th 1234, where the appellate court permitted a challenge to the sufficiency of the evidence where the parent had submitted on the social study. In the present case, the father negotiated away a trial, received the benefits of not having to admit guilt, and also received services. Under these circumstances, it would be unfair to the dependency system to allow him to raise these appellate issues. The court also found the social study provided sufficient evidence to establish jurisdiction under subdivision (a).

Appeals and Writs – Mootness.

In *In re J.S.*, *supra*, 199 Cal.App.4th 1290, discussed, *ante*, in the section on jurisdiction, in which the reviewing court found the child's marriage and emancipation deprived the juvenile court of jurisdiction, the court also rejected the Department's claim that the appeal had been mooted by the juvenile court's exit order. As the exit order depended on the juvenile court's erroneous determination that the minor was not emancipated, the error directly impacted the exit order and the appeal was not moot (citing *In re Joshua C.* (1994) 24 Cal.App.4th 1544).

Appeals and Writs – Writ Requirement for Orders Setting Section 366.26 Hearings.

In *In re T.W.* (2011) 197 Cal.App.4th 723, the juvenile court found jurisdiction, removed the children from parental custody, denied services, and set the section 366.26 hearing. Appealing from the juvenile court's subsequent order terminating parental rights, mother challenged only the order denying services on appeal. Her contention on appeal was that this issue could be raised on appeal from the section 366.26 orders, notwithstanding the

writ requirement set forth in section 366.26, subdivision (l), because she had not been present at the dispositional hearing and the notice of the writ requirement mailed to her under section 366.26, subdivision (l)(3)(A) did not include the zip code. The Second District, Division 8, dismissed the appeal for non-compliance with the writ requirement. Although the mother was not present when the court announced the writ requirement, her attorney was present. Also, the mailing was to the correct address. The absence of a zip code would only result in delay in delivery, not non-delivery. Where there was no evidence the mother did not have notice of the writ requirement, her failure to pursue the issue by writ was not excused.

ENDNOTES

1. This article covers developments from March 2, 2011 to November 30, 2011. The article is published at http//www.capcentral.org/resources/dep_case.aspx, 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 CCAP Staff Attorneys Melissa Nappan, John Hargreaves, Colin Heran, Deanna Lamb and Laurel Thorpe for their assistance with this article.

3. In *Guardianship of H.C.* (2011) 198 Cal.App.4th 1235, the First District, Division 3, found no violation of Probate Code section 1513, subdivision (c) where the CPS report was not provided directly to the probate court but was given by CPS to the probate court investigator who provided it to the court. The court also held the parent was not entitled to appointed counsel to contest the establishment of a guardianship in probate court (using the standard set forth in *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, for determining due process right to counsel in custody proceedings).

4. See, e.g., *Robert S. v. Sandra D.* (2011) 2011 Unpub Lexis 4176, modified at 2011 Cal. App. Unpub. LEXIS 4979.

5. In *In re N.M.* (2011) 197 Cal.App.4th 159, discussed, *post*, in the section on appeals and writs, the appellate court found sufficient evidence in a social study to support jurisdiction under section 300, subdivision (a).

6. In two other 2011 appeals, presumptive parent status was denied. In *In re Bryan D., supra*, 199 Cal.App.4th 127, the child's thinking that the grandmother was his mother for several years, did not establish she was holding him out to the community such as to establish a presumption under Family Code section 7611.

In *Neil S. v. Mary L*. (2011) 199 Cal.App.4th 240, the Fourth District, Division 1 affirmed a family court's finding that the biological father's holding out twin children as his own was not sufficient to establish the presumption under Family Code section 7611, where he did not receive

the children into his home. The mother's husband, the non-biological presumed father, was present at birth and had signed a declaration of paternity.