SUPREME COURT DECIDES NEGLECT STANDARD FOR DEPENDENCY CASES.

Dependency Update[1]

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In *In re Ethan C.* (2012) 54 Cal.4th 610, the California Supreme Court faced the questions whether the neglect within the meaning of a dependency petition filed under Welfare and Institutions Code,[3] section 300, subdivision (f), is determined using a civil or criminal standard, whether a finding of current risk is required, and the level of causation required. The father's two young children were adjudged dependents and removed from his care under subdivision (f), based on evidence that the father had transported a third, eighteen-month-old, child in an automobile without securing her in a child safety seat and she was fatally injured when another vehicle collided with their car. On appeal, the Court of Appeal affirmed, and on review, the California Supreme Court affirmed the decision of the Court of Appeal. A subdivision (f) finding does not require a showing of criminal negligence, but only that the lack of ordinary care resulted in another child's death. On the second question, the Supreme Court held there is no requirement of a finding that the circumstances indicate a present risk of harm to the other children. Finally, on the third question, the showing of causation is satisfied by showing the parent's neglect was a substantial contributing cause of the child's death. Here, the father's failure to secure the child in a child safety seat breached his duty to guard against a precise and foreseeable risk, a precise risk that materialized.[4]

Several other jurisdictional issues were decided this year, including several on sexual abuse.

Jurisdiction – Sufficiency of Evidence – Abuse and Neglect.

In *In re A.S.* (2012) 202 Cal.App.4th 237, the parents left their eight-month-old child in the care of the paternal grandfather while they were at work. The grandfather took the minor to a hospital when she became limp and non-responsive. Doctors concluded she had sustained a head injury – subdural hematoma and bilateral retinal hemorrhages – consistent with her head being shaken or slammed against a soft surface, something that does not usually occur accidentally. Also, it had not been reported the child had been in a car accident and the injury may have been up to a week old. The parents and the grandfather denied causing any of the injuries. The juvenile court sustained jurisdiction under section 300, subdivision (b). Upon the parents' appeal, the

Fourth District, Division 4, affirmed. The evidence supported a finding the injuries were inflicted intentionally, and the parents could not be ruled out as perpetrators. The evidence supported a reasonable inference that one of the caretakers injured the minor. [Note: the presumption under section 355.1 was not invoked in this case, as it had not been relied upon in the trial court.] Conclusive proof of the identity of the perpetrator was not required as the purpose of juvenile court jurisdiction is to protect an abused or neglected child from any unidentified perpetrator.

In *In re Ashley B.* (2012) 202 Cal.App.4th 968, the Second District, Division 2, found sufficient evidence supporting a sibling petition under subdivision (j), where the facts showed the infant sibling died of Sudden Infant Death Syndrome and parents put the infant sibling to sleep in an adult bed instead of on his back in a crib, as instructed by doctors. Moreover, there was no requirement that the court make an express finding that this conduct met the requirements of either section 300, subdivision (a) or (b) as a requisite to jurisdiction under subdivision (j).

Jurisdiction – Sufficiency of Evidence – Sexual Abuse.

In *In re I.J.* (2012) 207 Cal.App.4th 1351, the father challenged the sufficiency of the evidence supporting the juvenile courts finding of jurisdiction over his five children under subdivisions (b), (d), and (j), where the evidence was that he had numerous sex acts with his older daughter and showed her pornographic videos on the family computer. Among other contentions on appeal, the father argued that there was no jurisdiction as to the younger brothers, because there was no evidence they had been involved in or saw the abuse. The Second District, Division 8, affirmed, in a split decision. The majority held the sons were at danger within the meaning of subdivision (d) because the sexual conduct was so aberrant that they would eventually learn of it and possibly be taught by the father to become predators. As to subdivision (d) the court rejected the holdings of *In Re Rubisela E.* (2000) 85 Cal.App.4th 177, and *In re Maria R.* (2010) 185 Cal.App.4th 48, finding no risk of sexual abuse in similar situations, and followed the contrary authorities, *In re P.A.* (2006) 144 Cal.App.4th 1339, and *In re Andy G.* (2010) 183 Cal.App.4th 1405, holding other minors were at risk because of the father's extremely aberrant behavior. The court also noted (following *In re Maria R., supra*, in this respect), that jurisdiction under subdivision (j) over the sons did not require a showing required in subdivision (d) of a risk of sexual exploitation, but risk of any harm within the meaning of subdivisions (a), (b), (d), (e), or (i).[5] The dissent found no basis for jurisdiction as to the brothers.

The Second District, Division 8, again came to this result in a similar case, with a similar dissent, in *In re Ana C.* (2012) 204 Cal.App.4th 1317.

Jurisdiction – Procedure on Referral from Probate Court.

In *In re Kaylee H.* (2012) 205 Cal.App.4th 92, the parents placed their newborn child with a paternal great-uncle while working to resolve their substance abuse and legal problems. The uncle filed, with the parents' consent, for a Probate Code guardianship. The probate court granted a temporary guardianship and referred the matter to the Agency per *Guardianship of Christian G.* (2011) 195 Cal.App.4th 581, to determine whether dependency proceedings should be initiated. Under section 331, the juvenile court directed a petition be filed. The court then denied the father's demurrer, sustained jurisdiction under section 300, subdivision (b), and removed the child from parental custody. On appeal, the father argued this procedure was in error. The Fourth District, Division 1, reversed. The court erred in directing the filing of a dependency petition when there was no showing of need to protect the minor. Here, the minor was in the care of a suitable guardian and not at risk of abuse or neglect. Current risk was not shown by an allegation of future risk of harm were the child to be returned to her parents. The temporary guardianship was reinstated and the matter remanded for further proceedings in the probate court.

Jurisdiction – Admissibility of Evidence - Competent Witness.

In *In re Ana C., supra,* 204 Cal.App.4th 1317, discussed above in the cases on sexual abuse, jurisdiction rested in part on the testimony of a special education student with a diagnosis of mild retardation. The witness was found competent, and jurisdiction was sustained. On appeal, the father argued the court erred in basing jurisdiction on incompetent evidence. The Second District, Division 8, affirmed. The error was forfeited by failure to object in the trial court. Counsel did not render ineffective assistance of counsel by not objecting. Even if the error had not been waived, the court did not abuse its discretion. The court questioned the witness and determined she was qualified. The dissent would find that the witness was not competent because she did not understand the duty to tell the truth (citing Evid. Code, sec. 701, subd. (a)(2)), but that the error was harmless in light of the other evidence presented in the case.

Disposition – Procedure – Timeliness of Rehearing.

In *In re K.A.* (2011) 201 Cal.App.4th 905, a juvenile court referee rendered disposition on August 20, 2010, and the Department applied for rehearing, which was granted on August 26. The matter was continued once; and the court heard evidence and issued the new dispositional order on October 29. On appeal, the father challenged the rehearing as untimely, as California Rules of Court, rule 5.542(e) specifies the rehearing is to be held within 10 days of the order granting rehearing. The Fourth District, Division

2, affirmed. The rule is directory rather than mandatory because it provides no remedy for non-compliance. Obtaining relief on appeal for this type of error requires a showing of prejudice. The error was harmless here where the father participated fully in the hearing.

Disposition – Removal From Home.

Discussing the *Maria R./In re P.A.* split of authority described above, the Second District, Division 4, in *In re Alexis S.* (2012) 205 Cal.App.4th 48, found insufficient evidence to support removal of the half-sibling brothers from the home under section 361, subdivision (c)(4), in the situation in which their sister had been the sole victim of her step-father's inappropriate touching. The father had moved out of the family home and had only had monitored visits with his sons. There was no evidence the father had any proclivity to abuse male children.

Disposition – Denial of Services - Prior Failure to Reunify

Several cases were decided in which reunification services were denied because of previous termination of reunification services under section 361.5, subdivision (b)(10).

In the first, *In Lana S.* (2012) 207 Cal.App.4th 94, the denial of services had been under subdivisions (b)(10) and (b)(11). The mother challenged the trial court's implied finding that she had not made "a reasonable effort to treat the problems which led to the removal" of the minors in the previous case, on the grounds that the removal of the children in the present case had been for drug abuse and, in the previous case, the removal had been for domestic violence and physical abuse. The Fourth District, Division One, held that there was no error in that her drug abuse had been addressed in the previous case, even if it had not been alleged in the original petition. The court also held that her previous refusal to test and participate in those services signified her lack of interest in treatment, justifying the trial court's finding that services would not be in the children's best interest.[6]

In re Gabriel K. (2012) 203 Cal.App.4th 188, makes a broad interpretation of subdivision (b)(10). The juvenile court denied reunification services to the mother on grounds that she had been granted services previously as to Gabriel and those services had been terminated. On appeal she argued the decision was in error as to services for Gabriel because, as to him, services had not been terminated *on another sibling's case*, and (b)(10) states it only applies when services have been terminated as to a sibling. The First District, Division 4, held there was no error. Interpreting (b)(10) to include the situation in which services had been terminated previously as to the same minor was

consistent with the legislative purpose of (b)(10). Also, the trial court did not abuse its discretion in not finding services to be in the minors' best interest, as the mother had made no progress in alleviating the causes of removal of the minors.

But in the final case, *Melissa R. v. Superior Court* (2012) 207 Cal.App.4th 816, subdivision (b)(10) was interpreted narrowly. Here, the juvenile court denied reunification services under the authority of section 361.5, subdivision (b)(10), based on mother's failure to reunify with another child in a previous dependency case in Wisconsin. The First District, Division 1, granted a mother's petition for extraordinary relief. The trial court erred in denying services because by its express terms subdivision (b)(10) only applies when the previous removal was "pursuant to section 361," which means subdivision (b)(10) does not apply when the previous removal occurred in another jurisdiction.

Disposition - Placement with Non-Offending Parent.

In *In re A.A.* (2012) 203 Cal.App.4th 597, the minor was removed and placed with father when the mother was incarcerated on drug charges. Jurisdiction was terminated but it was later reactivated following the father's abuse of the child. Mother, who was incarcerated throughout the proceedings and received services in the first case, was denied services the second time. On appeal from the eventual termination of her parental rights, she argued the court erred at the time of disposition in not placing the minor with her as a non-offending parent. The Fourth District, Division 2, found the trial court did not err, for three reasons: 1) she did not ask for custody at the time of disposition; 2) she was neither the non-custodial parent nor a non-offending parent within the meaning of section 361.2; and, 3) the court's finding of detriment in return of the child to her at the time of the original disposition continues to disqualify her for custody.

Review Hearings - Adequacy of Services.

In *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, the child was removed from the parents on the grounds the parents were developmentally disabled and could not provide regular care. Services were ordered, but very little was offered by the Agency, including limited supervised visits. At the 18-month review hearing the court terminated services and scheduled a hearing under section 366.26. The parents sought writ relief. The Fourth District, Division 1, granted writ relief, directing the juvenile court to reinstate services with expanded services to the minor. The Agency's obligation was to provide services designed to remedy the family's problems. In the case of developmentally disabled persons, the services should respond to the family's special needs. Here, the parents were devoted to the child and fully cooperated with the Agency, and obtained positive reports. They were entitled to an opportunity to show they were able to parent their child. The evidence of reasonable services was legally insufficient. The

limited and supervised visits were insufficient because there was no evidence that any risk of harm could not be averted through skills training or by drop-in checks by the social worker, and detriment should not merely be assumed in the case of a developmentally disabled parent (citing *In re Jamie M*. (1982) 134 Cal.App.3d 530). As to the parental milestones the Agency required the parents to meet, such as attending the child's medical appointments, etc., the Agency failed to inform the parents of their importance.

Modification Petitions – Section 388 – Not Needed to Terminate Guardianships.

In *In re Xavier R.* (2011) 201 Cal.App.4th 1398, the Fifth District followed in *In re Angel S.* (2007) 156 Cal.App.4th 1202, in holding that a section 388 petition is not needed to terminate a probate guardianship, even when the guardian has been offered reunification services. The hearing is conducted under Probate Code section 728.

Parental Rights Termination - Adoptability Finding.

In *In re Michael G.* (2012) 203 Cal.App.4th 530, an appeal from a juvenile court order terminating parental rights, the parents argued that the assessment was inadequate and the juvenile court erred in not granting a short continuance to update the child's psychological evaluation and report from his therapist. The Fourth District, Division 1, agreed that the court erred in not granting the continuance. The additional information would have been helpful in determining whether the minor was difficult to place within the meaning of section 366.26, subdivision (c)(3). However, the error was harmless in light of the remaining record, including information from the minor's care giver and teacher indicating the child's adoptability.

Parental Rights Termination – Relative Caregiver Exception.

One of the 2008 legislative amendments to section 366.26 added the relative caregiver exception to adoption (sec. 366.26, subd. (C)(1)(A)), governing a child who lives with a relative who is unable or unwilling to adopt but who is willing to accept legal and financial responsibility for the child. In *In re K.H.* (2012) 201 Cal.App.4th 406, the Fifth District affirmed the juvenile court order selecting guardianship and dismissing jurisdiction, as the grandparents' objections to adoption were due to circumstances which did not include their unwillingness to accept legal or financial responsibility.

Parental Rights Termination – Tribal Customary Adoption Exception.

In *In re H.R.* (2012) 208 Cal.App.4th 751, the First District, Division 3, held the juvenile court erred in selecting a permanent plan of adoption and terminating parental rights in lieu of selecting tribal customary adoption as the permanent plan (secs. 366.24,

subd. (C)(6); 366.26, subds. (b), (c)(2)(B)(iii)) in this case in which the Yurok tribe had intervened prior to the jurisdictional hearing and recommended tribal customary adoption by the grandmother. On the appeal by the tribe, the court held that the juvenile court is not required to select tribal customary adoption in all cases. The court in the current case did not recognize the correct order of placement preferences and did not find that tribal customary adoption would be detrimental to the minor. Also, there was no evidence presented showing the minor would be adversely affected by this type of adoption. Therefore, in light of the legislative preference, the trial court abused its discretion.

Parental Rights Termination - Beneficial Relationship Exception.[7]

Parental Rights Termination – Sibling Relationship Exception.[8]

Parental Rights Termination – Probate Code section 1516.5.

In *In re Adoption of Myah M.* (2011) 201 Cal.App.4th 1518, parents of a two-year-old minor agreed that her paternal grandparents should be her guardians, and letters of guardianship issued. Four years later the guardians requested to adopt Myah and that parental rights be terminated, which relief was granted on a showing that adoption was in Myah's best interests. On appeal, the parents argued the court erred in not referring the matter to the county welfare agency at the time of the initial guardianship when the court knew of the allegations of parental unfitness. The First District, Division 2, affirmed, holding that a referral to a county welfare agency was not required when the parents had agreed to the guardianship, unlike the situation in *Guardianship of Christian G., supra,* 195 Cal.App.4th 581, meriting a referral where the parents were contesting the guardianship. The court also rejected the argument that the facts of the case required a finding of unfitness. Finally, substantial evidence supported the finding that adoption was in the minor's best interests.

Parentage – Maternity.

In *S.Y. v. S.B.* (2011) 201 Cal.App.4th 1023, the Third District affirmed the parentage decision in a family law custody case declaring the second same-sex mother to be the presumed parent when she had openly held out the children as her own, within the meaning of the Family Code section 7611, subdivision (d). S.B. on appeal contended that S.Y. had never actually received the children into her own home and held them out as her own. But the decision was supported by substantial evidence where S.B. had allowed and encouraged S.Y. to function as the second parent and S.Y openly embraced her rights and obligations as a parent. The court also rejected S.B.'s claim that recognizing S.Y. as a parent infringed on S.B.'s fundamental rights to make decisions regarding the children because the statute decides parentage rather than custody or visitation.

An allegation of parental abandonment will not be resolved by a parentage action. Stepparent adoption proceedings are required. In *In re D.S.* (2012) 207 Cal.App.4th 1088, concerned contested allegations of maternity by the birth mother, Elizabeth, who had signed voluntary declarations of paternity at the time of the children's birth and who cared for them until 2004, when the father, Derrick was given full custody. Elizabeth stopped visiting the children in 2007. The stepmother sought presumed parent status in a dependency proceeding initiated in 2011. The juvenile court granted her application. Later, Elizabeth appeared and sought unsuccessfully to vacate that order. On Elizabeth's appeal, the Fourth District, Division 1, reversed. A stepparent in this situation must initiate stepparent adoption proceedings. (Fam. Code, sec. 7800, et seq.) Where there has not been abandonment of the child at birth, relinquishment for adoption, or surrogacy, the section 7612 presumed parent procedure may not be used as a substitute or shortcut in the situation in which a biological mother appears to have abandoned her parental rights and responsibilities.[9]

Parentage – Presumed Parent Determination.

In re Cheyenne D. (2012) 203 Cal.App.4th 1361, concerns rebuttal of the presumption under Family Code section 7611, subdivision (d), in making the determination of presumed parentage. Here, the biological father, Richard, had a paternity judgment for child support purposes under Family Code section 7636, and he claimed it established his paternity of Cheyenne for all purposes. The juvenile court rejected the contention and found Dennis to be the presumed father. On appeal, the Second District, Division 3, affirmed. A section 7636 judgment rebuts the presumption under 7611 (and in this respect the trial court erred in not finding the presumption rebutted), but this does not resolve the question of who should be determined the presumptive parent. Here, the trial court did not err in its final determination because Richard's involvement with the minor was concluded to be inadequate to fall within one of the section 7611 categories such as to give him presumed parent status.

C.R., the biological father of D.A. did not qualify under a section 7611 presumption in *In re D.A.* (2012) 204 Cal.App.4th 811, but he claimed he was a father under *In re Kelsey S.* (1992)1 Cal.App.4th 816. The other alleged father, E.A., had lived with the minor and the mother for two weeks before and two weeks after the child's birth. The child was detained in dependency proceedings at six months of age. As soon as genetic testing determined C.R. was in fact the biological father, he immediately sought to be determined the presumed father. The juvenile court denied those requests, and ordered he have only two supervised visits per month. C.R. appealed this order. The Second District, Division 1, reversed. Neither the order giving E.A presumed parent

status, nor the order denying C.R. that status, was supported by sufficient evidence. C.R. was the presumed father because he had taken the mother on prenatal doctor appointments and offered to pay expenses, and was kept from D.A. only because the mother refused him contact. E.A. on the other hand, only lived with the mother for a few months and did not openly and publicly maintain paternity.[10]

Parentage – Significance of a Biological Paternity Determination.

In *In re B.C.* (2011) 205 Cal. App.4th 1306, an alleged father was located when the matter was being set for the permanency planning hearing. He appeared and requested paternity testing. The court ordered paternity testing but provided the alleged father would have to pay for it. The alleged father then filed a section 388 petition for modification with a JV-505 stating he wished to meet his parental obligations if he was found to be the father. The court denied the petition. On appeal, the Second District, Division 3, reversed, following *In re J.H.* (2011) 198 Cal.App.4th 635, and *In re Baby Boy V.* (2006) 140 Cal.App.4th 1108, and rejecting *In re Joshua R.* (2002) 104 Cal.App. 1020. California Rules of Court, rule 5.635 provides that if there has been no prior determination of parentage, the court must take appropriate steps to make the determination. If a person appears at a dependency proceeding and requests a judgment of paternity on Form JV-505, the court must determine whether that person is the presumed parent. In the current case rule 5.635 required at least a determination of biological paternity.

Placements – Criminal History Exemptions.

In *In re M.L.* (2012) 205 Cal.App.4th 210, after the Department placed the child with her grandparents, the Agency learned that the grandfather had a criminal history, making the home ineligible as a placement. The Agency moved the child and filed a section 387 petition. The grandfather's request for an exemption by the Agency was denied. The juvenile court reviewed the propriety of the move and ordered the child placed with the grandparents. The Agency appealed and the First District, Division 1, reversed. The minor could not be placed with the grandparents without a criminal exemption under section 361.4. The Agency possesses exclusive authority to veto the placement. And it was not shown the Agency had abused its discretion in denying the exemption.

Placements -- Siblings.

In *In re A.S.* (2011) 205 Cal.App.4th 1332, the juvenile court initially ordered two siblings, A. and Ad., not be placed in separate homes, but subsequently ordered the minors be placed separately based on the social workers' conclusions that each child

stood a better chance in long-term foster care if they were placed separately. A.'s behavior was improving, but Ad.'s behavior resulted in the termination of many placements and the minors were currently in an emergence shelter. On the mother's appeal, the Fourth District, Division 3, affirmed. The standard of review is abuse of discretion. The opinions of the professionals provided substantial evidence supporting the decision in this case.

Placements – Pre-adoptive.

In *T.W v. Superior Court* (2012) 203 Cal.App.4th 36, concerning pre-adoptive placements, the minor sought review by petition for extraordinary relief of the juvenile court's order denying the Department's petition to remove the eight-year-old minor from his pre-adoptive home. The prospective adoptive father had previously adopted a highly traumatized sixteen-year-old foster child who had committed a series of increasingly violent crimes, and who was involved with a gang. The Fourth District, Division 1, granted relief, concluding that although under section 366.26, subdivision (n)(3)(B), pre-adoptive placement decisions like this one are made by the juvenile court rather than the Department, the juvenile court had abused its discretion in finding the minor's best interests would not be furthered by granting the petition. The court had not given appropriate weight to the legislative goal of securing an adoptive home free from the influences of criminal activity.

De Facto Parents.

In *In re Damion B.* (2012) 202 Cal.App.4th 880, the juvenile court denied the de facto parents request to call and cross-examine witnesses at the 18-month review hearing at which the court followed the Agency's recommendation and returned the children to the custody of their mother. On appeal, the First District, Division 3, affirmed. Under California Rules of Court, rule 5.534 (b), de facto parents have standing to participate as parties, be present at hearings, present evidence, and be represented by counsel. Here the de facto parents were not shut out of the hearing and their caregiver information forms were received as evidence. The juvenile court ascertained their position and found the procedure did not significantly undermine their ability to respond to the Agency's recommendation. Therefore, there was no basis for reversal.

Indian Child Welfare Act – Notice.

In the past year, two cases addressed how much family information must be

provided on ICWA notices. The answer may include great-grandparents but maybe not great-great grandparents. On appeal from a juvenile court order terminating a father's parental rights, the First District, Division 3, reversed the order and remanded to insure proper notice under ICWA in *In re A.G.* (2012) 204 Cal.App.4th 1390. Although the Department notified the correct tribes, the notices did not include information concerning the paternal grandparents, great-grandparents, or other relatives required under sections 224.2 and 224.3. The county argued res judicata barred the need for notice as the father had not mentioned the Indian heritage in a sibling's case. However, this is not res judicata when the effect will be to deny a tribe of ICWA notice.

While *In re A.G.* noted the importance of providing information on the grandparents, in *In re J.M.* (2012) 206 Cal.App.4th 375, the Second District, Division 8, held the failure to include information on the maternal great-great grandparents was harmless error where all maternal relatives had the same surname. Also the omission of the name of one minor was harmless where all minors' Indian heritage was through the same parent.

In *In re C.Y.* (2012) 208 Cal.App.4th 34, the mother had been adopted when she was a baby and had been told her adoption records stated something about Indian heritage. On appeal from a juvenile court order terminating her parental rights, she claimed the court failed to comply with the notice requirements of the Indian Child Welfare Act, as the Department did not investigate her claims when there were several possible areas of inquiry. The Third District affirmed, finding no error. Although Welfare and Institutions Code section 224.3, subdivision (a) requires the Department to investigate a claim of Indian heritage, there was no duty to seek further details when the parent did not provide the name of a tribe. California Rules of Court, rule 5.481 (a) and the related Judicial Council forms provide for inquiry of the parents at the outset. If there were additional details in her sealed adoption record, it was mother's responsibility to provide them to the Department (citing 25 U.S.C., sec. 1917).

With regard to fathers' claims of Indian heritage, the Second District, Division 2, in *In re Gabriel G*. (2012) 206 Cal.App.4th 1160, noted that although there is no duty to investigate the claim of an *alleged* father, that changes when the father is also identified as the *biological* father, coming to the same conclusion on this point as was reached in *In re A.G.*, *supra*.

Indian Child Welfare Act – Placement Preferences -

In *In re Anthony T. (2012) 208 Cal. App.4th 1019,* the juvenile court placed a child with an Indian family notwithstanding the contentions of the minor and his mother that

the placement was not within "reasonable proximity" to the mother's home. In order to visit his mother, he would have to spend at least 10 hours a week in a car. There was no reasonable alternative. On the appeal by the minor and her mother, the Fourth District, Division 1 reversed. Although state courts are required to give full faith and credit to decisions of a tribe, those decisions do not always control state court placement determinations. The court also held that the current placement decision did not violate the tribe's sovereignty.

Visitation Orders.

In a case having both typical and atypical visitation issues – jurisdiction to order sibling visitation and to order a parent to pay for the costs of that visitation, *In re A.R.* (2012) 203 Cal.App.4th 1160, the First District, Division 5, found the trial court had no jurisdiction under section 361.2, subdivision (a), to order the visits between half-siblings or to require the father of the minor A.R., to pay for the costs of visits between A.R., and the half-sibling, A.M., where there was no dependency jurisdiction over A.R. or the father. Also, there was no jurisdiction under section 388, subdivision (b), which requires a person seeking sibling visits with a dependent child to file a section 388 petition, because no such petition was filed.

Psychotropic Medication.

In *In re A.S.*, *supra*, 205 Cal.App.4th 1332, the case discussed above on sibling placement, the minor had been given a dose of Risperdal on an emergency basis because his behaviors had become increasingly dangerous and self-destructive. The social study showed some improvement when Ad. was on medication. The mother contested a subsequent order permitting psychotropic medication, but her opposition was found to be untimely. On appeal, she argued the procedure set forth in section 369.5, subdivision (c), and California Rules of Court, rule 5.640(c)(8) violated due process as she was given only two days to contest the administration of the medication. The Fourth District, Division 3, affirmed, finding the scheme provided notice and an opportunity to oppose the order for pychotropic medication. The two-day requirement is reasonable, given that the hearing and decision must be made within seven days. However, the court suggested amendment of the rule to tie the opposition date to date of service of the notice, which would avoid the filing of opposition after the juvenile court has already made its decision.

Restraining Orders.

In *In re M.B.* (2011) 201 Cal.App.4th 1057, the child had been removed from the home and, after the six month review hearing the mother, who lacked impulse control, repeatedly threatened Department employees, among others. The juvenile court issued a three-year order requiring her to stay 100 yards away from Department employees, but permitting her to communicate with social workers in response to communications from them, or through counsel, or in writing. On appeal, the mother argued the order was unauthorized by sections 213.5 (protecting children) or 340.5 (protecting social workers but not other Department employees). The Fourth District, Division 2, affirmed. The court has authority to issue restraining orders of this type under Code of Civil Procedure, section 527.8, and through its inherent powers under California Constitution, Article VI, section 1. Hearsay declarations are admissible in dependency actions including a hearing on a request for a restraining order. The evidence offered in this case made the required showing of imminent harm.

Minor's Counsel.

In *In re Nicole H.* (2011) 210 Cal.App.4th 388, a 13-year-old minor was made a dependent of the juvenile court and counsel was appointed as her CAPTA guardian ad litem (GAL). Minor's counsel requested a GAL be appointed to investigate filing a tort claim for the minor who had been raped by another minor in her foster home. The juvenile court denied the request. On appeal, the Third District reversed. When a dependent minor has a potential tort claim against the County, the juvenile court under section 317, subdivision (e) and California Rules of Court, rule 5.560(g)(3)(D) must appoint a separate GAL to act on behalf of the minor and protect the minor's interests prior to initiation of the civil proceedings. If the GAL finds it appropriate, the court must also appoint counsel to serve on a pro bono or contingency basis to investigate and initiate the tort action. The appointment must be done so as not to prejudice the minor's claim.

Juvenile Court Records.

In *In re Christian P.*, *supra*, 207 Cal.4th 1266, previously discussed in the section on juvenile court jurisdiction, the Second District, Division 3, held employees of the Department are authorized by section 827 to view juvenile court files generally and are not required to petition under that section when investigating a case, citing section 827, subdivision. (e)(1)(E), (F)) and California Rules of Court, rule 5.552(b)(1)(F), (H).

Appeals and Writs – Standing.

A recent case, *In re D.M.* (2012) 205 Cal.App.4th 283, addresses the standing of a minor to raise sibling issues on appeal from an order terminating parental rights as to all of the siblings. The Fourth District, Division 1, rejected on the merits the minor's contention that parental rights should not have been terminated in his case because of the exception to adoption for sibling relationship, section 366.26, subdivision (c)(1)(B)(v). But the court found the minor did not have standing to challenge the finding that the other minors were adoptable because he was not aggrieved by the adoptablility findings made in their cases.

Appeals and Writs – Disentitlement Doctrine.

In *In re E.M.* (2012) 204 Cal.App.4th 467, the Second District, Division 5, dismissed, under the disentitlement doctrine, a mother's appeal from an order of the juvenile court at a status review hearing, finding continued jurisdiction necessary. In this case, in which jurisdiction was based on danger to the children of sexual abuse by the father and failure to protect by the mother, the mother had fled with the children to Mexico after the petition was filed and remained there continuously (over two years), thereby avoiding any supervision or protection. Although a warrant for her arrest was recalled, her continued absence from the jurisdiction undermined the court's ability to protect the children, and was conduct egregious enough to warrant a forfeiture of her appellate rights in this case.

But in *In re A.G.*, *supra*, 204 Cal.App.4th 1390, discussed above in the section on ICWA notice, the appellate court rejected the Department's contention the father's appeal should be dismissed under the disentitlement doctrine because he had fraudulently avoided his duty to pay child support in child support proceedings involving the minor's sibling. The court could not determine the truth of this allegation and the facts were not egregious enough to warrant dismissal of the appeal.

Appeals and Writs – Forfeiture.[11]

Appeals and Writs – Remittitur. The juvenile court may consider facts beyond those giving rise to a previous reversal by an appellate court. In *In re Ryan K.* (2012) 207 Cal.App.4th 591, the appellate court had previously reversed a dependency order granting father custody and ordering visitation. After the remittitur issued, mother filed a section 388 petition presenting new evidence that the minor was neglected while in the father's

custody -- evidence substantiated in the social worker's report. The juvenile court, noting that it had jurisdiction only over the visitation issue, denied the petition. There was a second appeal and second reversal, the Second District, Division 4 holding that the juvenile court in fact had jurisdiction to consider events transpiring while the case was on appeal the first time. The juvenile court's duty was to implement the appellate court's directive in light of the current circumstances. Here, the circumstances had changed because of the mother's progress and the father's demonstration of poor parenting skills. Although the previous opinion related only to a visitation order, that decision did not limit the juvenile court's authority to act in the child's interests.

ENDNOTES

1. This article covers developments from December 1, 2011 to August 31, 2012. 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, Deanna Lamb and Laurel Thorpe for their assistance with this article.

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

4. Earlier in the year in *J.M. v. Superior Court* (2012) 205 Cal.App.4th 247, the Second District, Division 6, held that the mother's immersion within a drug lifestyle and her failure to secure the drugs to prevent her children's access to them, leading to one child's death by ingestion of pills, provided substantial evidence of neglect within the meaning of subdivision (f), under either a criminal or civil standard, and using the substantial contributing factor standard of causation.

5. The Fourth District, Division 1, came to a similar result under subdivision (j) in *In re R.V.* (2012) 208 Cal.App.4th 837.

6. The Third District came to a similar result in *R.T v. Superior Court* (2012) 202 Cal.App.4th 908.

7. The appellate courts affirmed parental rights termination orders finding insufficient showing of a beneficial relation within the meaning of section 366.26, subdivision (c)(1)(B)(i) in *In re Michael G.* (2012) 203 Cal.App.4th 580, and *In re K.P.* (2012) 203 Cal.App.4th 614.

8. Holding the sibling relationship evidence insufficient to require the exception to adoption provided under section 366.26, subdivision (c) (1)(B)(v), the Fourth District, Division 1, affirmed a decision terminating parental rights in *In re D.M., supra,* 205 Cal.App.4th 283, discussed above in the section on appeals.

9. Conversely, a single parent adoption decree does not necessarily preclude determination of a second mother under the Uniform Parentage Act. (*L.M. v. M.G* (2012) 208 Cal.App.4th 133.)

10. Similarly, in *Adoption of H.R.* (2012) 205 Cal.App.4th 455 a father's appeal from an order terminating his parental rights pursuant to Family Code, section 7800, et seq., the Third District in the published portion of the opinion found the trial court correct in finding the father was a *Kelsey S.* father, as the father publicly held out the child as his own, sought custody early, and visited the child as often as he could. The order terminating parental rights was reversed because of a discussion in the unpublished portion of the opinion that the father's parental rights could not be terminated without a finding that he was an unfit parent.

11. In *In re I.A.* (2012) 201 Cal.App.4th 1484, appellate challenges to sufficiency of evidence were forfeited because the appellant did not challenge *all* grounds of jurisdiction. In *In re Ana C.*, *supra*, 204 Cal.App.4th 1317, an appellate challenge to the competency of a witness was forfeited by appellant's failure to object to the evidence in the trial court.