

**JOINT APPLICATION AND STIPULATION FOR REVERSAL OF JUDGMENT
AND REMAND OF ACTION TO THE SUPERIOR COURT**

Appellant in this proceeding is the father, Harvey C.; respondent is the Stanislaus County Community Services Agency (CSA). The subject of this application is Tatiyana C. Said parties hereby jointly apply for and request this court to: (1) order a stipulated reversal of the findings and orders made at the October 3, 2002 dispositional hearing because the Indian Child Welfare Act was not complied with, and (2) remand the matter to the trial court to conduct a new section 358 hearing after compliance with ICWA, with specific directions to reverse the court's finding regarding applicability of the Indian Child Welfare Act. The parties further request that, upon reversal of the judgment, this court provide in its order that the remittitur shall issue forthwith. (Cal. Rules of Court, rule 8.272(a).)

The purpose of this Joint Application and Stipulation for Reversal of Judgment is to place the parties in the same position they would be if the appellant's appeals were prosecuted to successful completion and resulted in a reversal of the court's finding and orders made at the Welfare and Institutions Code Section 358 hearing.

The parties agree that reversal of the judgment is appropriate and should be granted pursuant to this stipulation, and that it is in the interest of justice that the Court act favorably on this joint application for reasons which include:

1. Reversal of the judgment will place the parties in the same position they would be if the appeal were successfully prosecuted to completion.
2. The relief sought is consistent with applicable principles of California law. Notice and inquiry as set out in California Rules of Court, rule 5.481, required by the Indian Child Welfare Act was deficient and reversal is required. Respondent seeks a reversal at this stage to minimize delay in achieving

permanence for the subject minor. This Joint Application and Stipulation for Reversal of Judgment is made and based on the reasons stated herein, and upon the accompanying Memorandum of Points and Authorities.

Dated:

MEMORANDUM OF POINTS AND AUTHORITIES

I. A STIPULATED REVERSAL IN THE PRESENT CASE WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST AND THE REASONS FOR REVERSAL OUTWEIGH ANY EROSION OF PUBLIC TRUST.

Under *Neary v. Regents of the University of California* (1992) 3 Ca1.4th 273, parties to an action may agree to settle their dispute and stipulate to a reversal of the trial court judgment. (*Id.* at p. 282)

Code of Civil Procedure section 128, subdivision(a)(8), enacted on January 1, 2000 modified *Neary* and provides that:

An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following:

(A) There is no reasonable possibility that the interests of the nonparties or the public will be adversely affected by the reversal.

(B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of a stipulated reversal will reduce the incentive for a pretrial settlement.

In the present case, a stipulated reversal would not diversely affect any nonparties or the public interest, and the reasons for reversal outweigh any erosion of public trust.

Appellant has appealed and contends there are grounds for reversal, and all parties agree reversal is appropriate and correct under the law.

Without conceding the merits of any other arguments, the parties jointly acknowledge that the juvenile court erred when it conducted a hearing under section 358 of the Welfare and Institutions Code without complying with the notice provisions of the Indian Child Welfare Act. Respondent contends this court is likely to reverse the trial courts rulings at the section 358 hearing conducted on October 3, 2002 because such provisions were not complied with. To minimize delay to the minor's permanency respondent believes stipulation to reversal of the juvenile court's rulings at the October 3, 2002 hearing conducted pursuant to section 358 of the Welfare and Institutions Code at this juncture furthers public policy and the minor's interests.

The parties have professionally sought to resolve the matter and in doing so not denigrate the integrity of the judicial branch. In fact, reversal and remand based upon this stipulation advances respect for the court and its judgments. (See *In re Rashad H.* (2000) 78 Cal.App.4th 376, 382)

It is respectfully submitted that based on the foregoing discussion and authorities, this court should reverse the juvenile court orders at the section 358 hearing on October 3, 2002 because the notice provisions of the Indian Child Welfare Act were not complied with, remand the matter for a new section 358 hearing after the Indian Child Welfare Act is complied with; and should direct that the remittitur issue forthwith.

Dated:

(PROPOSED) ORDER RE REVERSAL OF JUDGMENT AND REMAND OF ACTION TO THE SUPERIOR COURT

The parties hereto having filed a "Joint Application and Stipulation for Reversal of Judgment and Remand of Action to the Superior Court" and "Memorandum of Points and Authorities" in support thereof, and the court having been afforded the opportunity to review the merits of the appeal, it is determined that taken collectively and singularly, none of the factors listed in Code of Civil Procedure section 128, subdivision (a)(8), preclude us from accepting the stipulated reversal, and the stipulation is accepted and approved.

It is ordered that orders made at the October 3, 2002, hearing pursuant to section 358 of the Welfare and Institutions Code are hereby reversed, that the matter is remanded to the trial court to conduct a new section 358 hearing after the Indian Child Welfare Act is complied with, and that the remittitur shall issue forthwith.

SO ORDERED: _____

Dated: _____