

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

<p>In re [minor], et al., Persons Coming Under the Juvenile Court Law.</p> <hr/> <p>KERN COUNTY DEPARTMENT OF HUMAN SERVICES</p> <p style="text-align: center;">Petitioner and Respondent,</p> <p>v.</p> <p>[Appellant client/mother].</p> <p style="text-align: center;">Respondent and Appellant.</p>	<p>APPEAL NO.: F _____</p> <p>Kern County Juvenile Court No. J _____ J _____</p>
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MOTION TO TREAT APPEAL AS WRIT

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF KERN, JUVENILE DIVISION
Honorable [Name], Judge

Attorney Name
State Bar No. _____
[Address]
[phone]

Attorney for Appellant [Client]

By Appointment of the Fifth District Court of Appeal
Under the Central California Appellate Program
[Assisted/Independent] Case System

Appellant mother, [client-name] (hereafter “mother”), by and through her attorney [attorney name], respectfully requests the court treat the appeal filed in the above-referenced matter as a writ, and in support thereof states:

1. The children in this proceeding are [minor-X] (age 12) and [minor-Y] (age 13). Minor-X and minor-Y were removed from their father’s home because minor-X and his step-sibling minor-W suffered physical abuse at the hands of the father and there was domestic violence between their father and step-mother. In addition, at the time of the disposition hearing a criminal proceeding was pending against the father based on allegations that he and minor-Y were having sexual relations. (R.T. p. 113-114.)

2. Mother did not have custody of Minor-Y and Minor-X at the time of the incidents giving rise to the Welfare and Institutions Code section 300 petition filed by the Kern County Department of Human Services (hereinafter “Department”).¹ No allegations were filed against mother by the Department.

3. Mother was non-custodial because she had been allowed only very limited contact with her children by the father during the eight years since mother and the father divorced. Although mother made attempts to obtain access to her children through the family court, the father concealed the children from mother and consistently thwarted mother’s attempts to enforce the “reasonable visitation” order she was granted by that court. (See Clerk’s Transcript on Appeal for Minor-X, J ____ (C.T.²), pp. 176-203 [Orders to

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

² There are two Clerk’s Transcripts on Appeal filed with this court, one for Minor-Y G. and one for Minor-X. These transcripts are substantially similar, although not identical. For purposes of this motion, reference will be made solely to the Clerk’s Transcript filed for Minor-X.

Show Cause and Police Reports filed in Family Court in 1993 and 1994]; Reporter's Transcript on Appeal (R.T.), pp. 51-55, 64-67.)

4. After inspecting mother's home, conducting a background investigation on mother and her domestic partner (name), assessing the quality of care mother's other children received, and assessing the quality of care Robin C.'s wards were receiving, the Department recommended Minor-Y and Minor-X be placed with mother and that services be provided to them. (C.T. pp. 154-175; R.T. pp. 73-78.)

5. By the time of the disposition hearing, Minor-Y and Minor-X both informed the social worker they wanted to be placed with mother. Minor-X expressed a desire to live with his mother even before the children were removed from the father. Minor-Y initially informed the social worker she did not wish to be placed with mother because mother is a lesbian; however, by the time of disposition Minor-Y wanted to live with mother rather than in foster care. (R.T. pp. 37, 44-45, 87-88.)

6. The juvenile court refused to place Minor-Y and Minor-X with mother because mother is a lesbian and lives in what the court referred to as "traditionally another questionable family environment". Although the court stated it would not place Minor-Y and Minor-X with mother even if it "cut out that issue of the relationship of the mother with her lesbian partner", the court immediately thereafter stated "[b]ut there are so many issues here that really trouble the Court placing these children in *that type of environment*". (R.T. pp. 120-126 [emphasis added].)

7. The facts relied upon by the juvenile court to deny placement of the children with mother are insufficient as a matter of law to preclude placement. The juvenile court abused its discretion and the children and mother are suffering irreparable harm as a result.

8. The children are placed in separate foster homes. (C.T. p. 155.) They were granted only supervised visits one time per week for one hour with mother. (R.T. p. 127.)

9. Although writ relief is not available for the great majority of garden-variety legal errors (*State Farm Mutual Auto Insurance Co. v. Superior Court* (1956) 47 Cal.2d 428), the reality that children and parents suffer irreparable harm through passage of time is well recognized in dependency cases. (*In re Emily L.* (1989) 212 Cal.App.3d 734.) Many published dependency opinions suggest seeking writ relief because it is more effective than the appellate remedy. (*In re Michelle M.* (1992) 8 Cal.App.4th 326; *L.A. County Dept. of Children Services v. Superior Court* (1996) 51 Cal.App.4th 1257; *Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238.)

10. In this case, judicial error is keeping the children from being placed with mother as originally recommended by the Department. This error is compounding the injuries these children have already suffered by keeping the children separate from each other and out of the custody of a committed and stable mother. Treating mother's appeal as a writ will serve the best interests of the children by resolving an important issue which should be decided in time to beneficially affect the children for whom the process has been established to protect. (*In re Michelle M.* (1992) 8 Cal.App.4th 326, 330.) Treating the appeal as a writ will also serve the interests of judicial economy by ensuring resolution of the custody issues prior to the time scheduled for review of the children's dependency status. In stark contrast, allowing this matter to proceed as an appeal will drag out the time these children must remain apart from mother. Instead of working on building a permanent and secure relationship with mother, the children will be (at best) placed "on hold" in the

foster care system or (at worst) harmed further, emotionally and/or physically, during the months it takes for the appeal to be decided.

11. On December 7, 2004, the undersigned spoke with [County Attorney] with the Kern County Counsel's Office. [County Attorney] stated that her Office was not opposed to converting the appeal in this matter to a writ.

For the foregoing reasons, [Client], with no opposition from the Department, respectfully requests the court deem this appeal a writ.

DATED: _____

Respectfully submitted,

[Attorney Name], State Bar No. _____
Attorney for Appellant [Client Name]