UNITED STATES SUPREME COURT AND CALIFORNIA SUPREME COURT FOCUS ON THE INDIAN CHILD WELFARE ACT

Dependency Update[1]

By Bradley Bristow[2]

The United States Supreme Court and the California Supreme Court rarely decide cases arising under the Indian Child Welfare Act. But the United States Supreme Court recently resolved an ICWA issue in *Adoptive Couple v. Baby Girl* (2013) ___ U.S. ___ [186 L.Ed.2d 729]. In this case, the South Carolina Supreme Court affirmed a trial court decision turning the 27-month-old child over to Father whom she had never met, holding that two provisions of ICWA, 2 U.S.C. section 1912 (d), barring involuntary termination of parental rights without a showing of remedial efforts to prevent the breakup of the Indian family, and section 1912(f) requiring a heightened showing of serious harm likely to result from continued parental custody applied. The United States Supreme Court granted certiorari and reversed the decision of the South Carolina Supreme Court in a 5-4 decision, holding the father who never had custody of the child could not invoke ICWA to regain custody under the facts of this case.[3] Also the provision in section 1915(a) adoption preference had no application here, where neither the father nor other members of the Cherokee Nation formally sought to adopt the child. The dissent noted that section 1903 recognizes the birth parent as the parent which is enough to establish a "parent-child" relationship.

Then, in 2014 the California Supreme Court granted review on two ICWA issues. First, in *In re Abbigail A.* (2014) 226 Cal.App.4th 1450, review granted 9/10/2014 (S220187/C074264), the issue presented is:

> "Do rules 5.482(c) and 5.484(c)(2) of the California Rules of Court conflict with Welfare and Institutions Code section 224.1, subdivision (a), by requiring the juvenile court to apply the provision of the Indian Child Welfare Act (25 U.S.C., sec. 1901 et seq.) to a child found eligible for tribal membership if the child has not yet obtained formal enrollment?"

And in *In re Isaiah W*. (2014) 2014) 228 Cal.App.4th 981, review granted 10/29/2014 (S221263/B250231), the issue presented is:

"Does a parent's failure to appeal from a juvenile court order finding that notice under the Indian Child Welfare Act was unnecessary preclude the parent from subsequently challenging that finding more than a year later in the course of appealing from an order terminating parental rights?"

Finally, on February 25, 2015, the Bureau of Indian Affairs made its first update in 35 years of "Guidelines for State Courts and Agencies in Indian Child Custody Proceedings." (80 Fed. Reg. 10146-10159.) The Bureau's press release said, "The updated guidelines will help ensure tribal children are not removed from their communities, cultures and extended families. The guidelines clarify the procedures for determining whether a child is an Indian child, identifying the child's tribe, and notifying its parent and tribe as early as possible before determining placement. The updated guidelines also now provide comprehensive guidance on the application of active efforts to prevent the breakup of the Indian family. They also provide clarification that ICWA's provisions carry the presumption that ICWA's placement preferences are in the best interests of Indian children." To accompany the guidelines, new rules are also proposed.

Indian Child Welfare Act – Notice Issues.[4]

Indian Child Welfare Act – Definition of Indian Child. In *In re Francisco M.* (2014) 230 Cal.App.4th 73, an appeal from a juvenile court order removing Francisco, an adopted child, from his parents' custody, the mother, a member of the tribe argued the juvenile court erred in failing to recognize him as an Indian Child. The Second District, Division Three, affirmed. The applicable portion of ICWA, 25 U.S.C section 1903(4) defines Indian Child as one who is either a member or a biological child of a member.

Indian Child Welfare Act – Active Efforts. In *C.F. v. Superior Court* (2014) 230 Cal.App.4th 227, the mother of three minors who were registered members of an Indian tribe filed a petition for extraordinary relief after her reunification services were terminated and the section 366.26 hearing was set. In this case in which the original jurisdiction was based on the mother's substance abuse, she argued that the Agency had not made "active efforts" within the meaning of section 361.7. The First District, Division 4, denied extraordinary relief, holding the standard of review for active efforts is no different than the review for determining whether reasonable services were provided. Here the agency had repeatedly contacted the mother, had encouraged her to participate in the case plan, and had assisted her with housing and employment.

Indian Child Welfare Act – Placements. Autumn was an Indian child who had been freed for adoption. ICWA required she be placed with a member of her family, a member of her tribe, or with another Indian family. The maternal grandmother was a potentially

viable placement except that the grandfather had a conviction for contributing to the delinquency of a minor. Based upon the Department's representation that the offense was non-exemptible under section 361.4, subdivision (d)(2), the juvenile court did not consider the grandmother's home on the merits and placed Autumn in a non-Indian home with a distant relative. On the parent's appeal in *In re Autumn K*. (2014) 221 Cal.App.4th 674, the First District, Division Two, found the Department had misconstrued the statute, as section 361.4, subdivision (f) provides that an exemption may be made for this offense. The matter was remanded, directing the Department to reconsider the exemption requests, and should the exemption be denied, the record must establish an exercise of sound discretion in making that decision.

The placement preference under 25 U.S.C. 1915(a) and section 361.31, subdivision (c), applies even when the child previously was placed with a non-Indian foster family with the knowledge and consent of the tribe. In *In re Alexandria P.* (2014) 228 Cal.App.4th 468, the 17-month-old child was placed with the de facto parents while the case was in reunification, but when reunification services were terminated, the tribe recommended placement with relatives in Utah. The de facto parents, with whom the child lived for two-and-a-half years, contested the change in placement. The court ordered the change, finding the de facto parents had not shown by clear and convincing evidence that there was a certainty the child would suffer harm as result of the transfer. The Second District, Division Five, reversed. Although there must be clear and convincing evidence of good cause to deviate from ICWA placement preferences, there is no requirement to show with certainty the minor will suffer harm. Also, the court must consider the child's bond with the foster family and the best interests of the child. The matter was remanded to determine good cause for deviation from the placement preferences under the current circumstances.

Tribal Customary Adoptions (TCA). In two cases *In re G.C., Jr.* (2013) 216 Cal.App.4th 1391, 1399, and *In re I.P.* (2014) 226 Cal.App.4th 1516, 1526, the reviewing courts faced contentions that juvenile courts had not properly ensured consideration of tribal customary adoptions (TCA) as required by section 366.24. In both cases the reviewing courts found the contentions forfeited because TCA consideration was not requested in the trial court, and in each case the court found in the alternative that any error was harmless. In *In re G.C., Jr., supra*, a father's appeal, it was the mother, who had Maidu Indian heritage, and the mother relinquished her parental rights over the child in favor of adoption by a tribal member. The Third District noted that the tribe had intervened and had considered tribal adoption, but had made it known to the court that it would not contest the adoption and withdrew its intervention in favor of the adoption.

In *In re I.P*, *supra*, the mother did not relinquish the child for adoption, but the

proposed adoption was by a Navajo Nation tribal member. The tribe had intervened but had not proposed TCA as an option. The Fourth District, Division Two, held the TCA option must be proposed affirmatively, following *In re G.C.*, *Jr.*, *supra*.

Juvenile Court Procedure – Guardians ad Litem. In *In re M.P.* (2013) 217 Cal.App.4th 441, the mother complained on appeal from orders after jurisdiction and disposition hearings that the juvenile court had erroneously appointed a guardian ad litem (GAL) and refused to hear her complaints against her attorney in her motion under *People v. Marsden* (1970) 2 Cal.3d 118. On appeal, the Sixth District affirmed, holding the allegations of the petition that the mother suffered from delusions contained a factual basis supporting a finding that she did not have capacity – the ability to rationally confer with or assist her counsel. Also, mother did not allege that counsel was not providing adequate representation or that an irreconcilable conflict occurred. Thus, it appeared that the appointment of the GAL would address mother's complaints.

Juvenile Court Procedures – Rehearing and Referees. In *In re L.J.* (2013) 21 Cal.App.4th 112, 1138, following the termination of their parental rights by a referee, parents appealed (C071919), and father petitioned for rehearing on the ground that the court erred in proceeding in his absence when he had telephoned to notify the court he would be late. The referee granted the rehearing and again terminated parental rights. The father appealed. (C071266.) The Third District affirmed in C071919, but dismissed the appeal in C071266. The first appeal, C071266, was not mooted by the *referee's* purported grant of rehearing. Section 252 authorizes only a *judge* to grant rehearing of a referee's decision terminating parental rights. Therefore, all orders after the referee's grant of the rehearing were void, and the appeal from the second order was dismissed.

Jurisdiction – Sufficiency of Evidence – Abuse and Neglect. In *In re D.P* (2014) 225 Cal.App.4th 898, the juvenile court sustained jurisdiction under section 300, subdivision (a), based on evidence that the infant had bruising and bite marks dating from the period that he had alternated living with each of his parents for one or two weeks at a time. Father reported discovering the injuries after mother dropped the baby off at his house. The medical report stated the injuries were non-accidental, and the bite marks were from an adult. The juvenile court sustained jurisdiction, and the Second District, Division Three, affirmed. The mother and her roommate took care of the child at the time the injuries occurred. Thus, the juvenile court did not err in applying the section 355.1 presumption.

But in *In re Isabella F.* (2014) 228 Cal.App.4th 128, the First District, Division Four, found the mother's slapping her 10-year-old daughter, and locking her into a closet was insufficient to support jurisdiction under section 300, subdivision (a), where: 1) two weeks later the child reported that this type of thing had never occurred before; 2) the child was

receiving therapy and stated she did not fear her mother but was afraid of being taken from her; 3) mother and child were participating in services; and 4) mother agreed not to hit her daughter again. The minor was not injured in what was an isolated incident.

Jurisdiction – Sufficiency of Evidence – Failure to Protect or Provide for Support. In *In re John M.* (2013) 217 Cal.App.4th 410, 419, the juvenile court sustained an amended petition alleging jurisdiction under section 300, subdivision (b) because of the mother's substance abuse and the father's past domestic violence with the mother (hitting each other and throwing things). On appeal, the father contended the record was insufficient to show current risk of harm in that the main incident had occurred a year earlier and the minor was not present. The Second District, Division One, affirmed, holding the parents' history of domestic violence showed an ongoing pattern which presented a risk to the emotional and physical health of the minor, a toddler at the time of the hearing.

Other cases finding sufficient evidence:

The facts in *In re T.V.* (2013) 217 Cal.App.4th 126, 134, presented an even stronger case for jurisdiction, as T.V.'s father had a history of spousal abuse convictions and the mother had obtained retraining orders against him. The minor was present during one of six physical altercations between the parents and saw them hitting each other. The Fourth District, Division One, affirmed the finding of jurisdiction, holding the ongoing violence placed the minor at a risk of physical harm, even though she did not witness the incident in which father punched the mother.

In *In re Christopher R.* (2014) 225 Cal.App.4th 898, parents challenged the sufficiency of the evidence of substance abuse. The mother was a long time abuser of cocaine and the child, Brianna tested positive for methamphetamine at birth. The father of Brianna was on parole and admitted abusing marijuana. The court sustained jurisdiction as to Brianna and three other young children. On appeal, the mother challenged jurisdiction as to children other than Brianna, and the father argued that his marijuana abuse was an insufficient basis for jurisdiction. The Second District, Division Seven, affirmed. Mother had lied about her substance abuse in the hospital, and had acted irresponsibly in leaving the children with others without stating where the mother could be reached. The court rejected her argument that a diagnosis of substance abuse under the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV), was required by *In re Drake M.* (2012) 211 Cal.App.4th 754, as the *Drake M*. analysis was not statutorily mandated.[5] The court found jurisdiction supported as to the father by his substance abuse combined with his unemployment and scrapes with the law.

The evidence the parent made an appropriate plan was insufficient in *In re J.L.* (2014) 226 Cal.App.4th 1429. The mother left the seven-year-old J.L. with relatives for two years while she was in and out of prison. The minor was physically and sexually abused by the

relatives. The juvenile court dismissed the petition and the Department appealed, The Second District, Division Eight, reversed, holding that there was no reasonable basis for not taking jurisdiction. Although mother argued she had no knowledge of the abuse, the question was whether she knew of the risk of harm. Mother admitted knowing many facts demonstrating the minor would be at risk. She knew the relative had a criminal history and she said he "only wanted custody of J.L. for the food stamps and the money.

In *In re A.R.* (2014) 228 Cal.App.4th 1146, the juvenile court sustained jurisdiction based upon the father's sexual abuse of the minors and his driving intoxicated with the minors in the car, and the mother's having moved out of state two years earlier and leaving the children in his care. The Second District, Division Eight, affirmed. Mother knew of the father's long standing drug abuse and violence, yet she gave up trying to see the girls and moved out of state. She was also on notice of their poor medical care as the Department had previously notified her.

Cases finding insufficient evidence:

The evidence supporting jurisdiction under subdivision (b) was found insufficient in *In re A.G.* (2013) 200 Cal.App.4th 675. In this case, the juvenile court sustained jurisdiction based on the mother's mental illness, placed the children with the father and terminated jurisdiction. The Second District, Division One, in reversing, stated the court should not have sustained the petition because the father was always capable of caring for the children. The court should have stayed action on the petition until father received a custody order from the family court.

In *In re Isabella F.*, *supra*, 228 Cal.4th 128, discussed in the section on abuse, the First District, Division Four, found the evidence of the father's mental illness insufficient to support jurisdiction under section 300, subdivision (b) when there was no recent evidence of any risk and the child had not seen the father in a long time.

In *Maggie S. v. Superior Court* (2013) 200 Cal.App.4th 662, the Second District, Division Two, granted the mother's petition for extraordinary relief from orders made at the jurisdictional hearing, sustaining jurisdiction under section 300, subdivisions (b) and (g). The mother gave birth while in prison. One of the care providers she had designated was the child's godparent who had stated she would care for the minor. With respect to the allegation of failure to provide, the mother was not required to prove the suitability of this care provider, and even if this placement did not work out, the mother could have been located to make other arrangements. Thus, the evidence was insufficient under subdivision (b) because a "substantial risk of physical harm or illness" to the baby was not shown.

In *In re Christopher M.* (2014) 228 Cal.App.4th 1310, a father appealed only the finding

of jurisdiction based on his failure to provide the minor with the necessaries of life, but the Second District, Division Eight, permitting the appeal, found insufficient evidence of jurisdiction based on the mother's abuse of the sibling, even though the father did not challenge that finding. The court permitted the appellate challenge on the grounds the jurisdictional finding as to the father could affect his request for placement under section 361.2. The evidence was insufficient because at the time of the hearing the father was out of prison and employed and there was no indication that he could not make other arrangements for the child's care.

Finally, the Second District, Division Eight, held the evidence of mother's history of substance abuse was found insufficient to support jurisdiction over her teenage daughter in *In re Rebecca C.* (2014) 228 Cal.App.4th 720, and reversed the jurisdictional finding. The home was clean and there was no evidence of drugs or firearms. The minor had not been abused or neglected. The fact that the mother was not on top of the minor's homework was insufficient to show the risk of physical harm contemplated in section 300, subdivision (b). Also, the fact that the mother abused amphetamine, methamphetamine, and marijuana, which can cause stimulant driven or hallucinogenic behavior, is not enough to establish a risk of physical harm to the minor.

Jurisdiction – Sufficiency of Evidence – Sexual Abuse. In *L.A. County DCFS v. Superior Court* (2013) 222 Cal.App.4th 149, the father had been convicted of sex offenses against a ten-year-old boy in 1986 and a six-year-old boy in 1989. He went to prison on these offenses and then was treated as a sexually violent predator (SVP) for 13 years before being released. The juvenile court dismissed the petitions alleging that father's son was at risk because of the parents' substance abuse and the father's past commission of sexual offenses based on the favorable expert evaluations at the time of the father's release from the state hospital. The Second District, Division Five, granted the County's petition for writ of mandate. Under section 355.1, a presumption of a substantial risk of abuse or neglect arose from the father's convictions and sex offender registration requirement. The presumption was not rebutted when father had not recently engaged in therapy to prevent recurrence and had minimized the severity of the prior offenses.

By contrast, the Second District, Division Seven, found the section 355.1 presumption rebutted in *In re Quentin H.* (2014) 230 Cal.App.4th 608, in which the father, convicted in 1987 of lewd and lascivious acts on a child under 14, had not reoffended in over 20 years, and whose children said he had not acted inappropriately with any child in his care. The juvenile court erred in finding that no evidence contrary to the presumption had been presented. The matter was remanded for the juvenile court to weigh the evidence.

Jurisdiction – Abuse of Sibling. In *In re Francisco D.*, *supra*, 230 Cal.App.4th 73, discussed in the sections on ICWA and disposition out of the home, the Second District,

Division Three, held substantial evidence supported jurisdiction under section 300, subdivision (a) where there was a long history of emotional, verbal, and physical abuse of the minor's twin sister.

Jurisdiction – Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Three cases examined the effect of a court exercising emergency jurisdiction under UCCJEA, when the home state was not contacted as required in Family Code, section 3424, subdivision (d). In *In Cristian I.* (2014) 224 Cal.App.4th 1088, the Second District, Division Seven, found the error harmless, where jurisdiction was sustained under section 300, subdivisions (b) and (e), for parental conduct characterized by the trial court as "torture."

However, in both *In re Gino C.* (2014) 224 Cal.App.4th 959, and *In re A.M.* (2014) 224 Cal.App.4th 593, Mexico was the home state and the trial court failed to give notice to Mexico. The Fourth District, Division One, found no error in the trial court's findings of personal jurisdiction under section 300 and emergency jurisdiction under UCCJA, but remanded in each case for contact and notice to be made to Mexico -- the dispositional orders to take effect only if Mexico did not assert jurisdiction.

Jurisdiction – Notice[6]

Disposition – Family Maintenance Plans. In *In re Daniel B*. (2014) 231 Cal.App.4th 663, the juvenile court placed the children with mother in a plan of family maintenance. The mother was ordered to participate in a domestic violence support group for an open-ended amount of time, delegating the determination of how long she would be required to participate. On appeal, the Second District, Division Two, upheld the open-ended time period, but held the court erred in delegating to the counselors the determination of whether the mother had satisfied her requirements. The juvenile court and not the counselors must make that determination (citing *In re Donnovan J.* (1997) 58 Cal.App.4th 1474).

Disposition – Removal From Home. In *In re T.V.* (2013) 217 Cal.App.4th 126, 137, discussed above in the section on jurisdiction, the Fourth District, Division One, found the evidence sufficient to support placement of the child out of the home where the parents had ongoing domestic violence. The fact that the father had previously participated in counseling was not controlling in light of his continued anger issues and denial of responsibility for the current incidents.

The Fourth District, Division Two, came to the same result in *In re J.S.* (2014) 228 Cal.App.4th 1483, relying on *In re T.V.*, *supra*, and also held that the removal under section 361, subdivision (c)(1) can be based on risk of detriment to the child's emotional

well-being.

In *In re Francisco D.*, *supra*, 230 Cal.App.4th 73, discussed in the section on jurisdiction based on abuse or neglect of siblings, the Second District, Division Three, held the long history of emotional, verbal, and physical abuse of the sibling supported the dispositional order removing Francisco from the mother's custody.

But in *In re Ashley F.* (2014) 225 Cal.App.4th 803, the Second District, Division One, found insufficient evidence supporting the finding of the juvenile court. The children had complained that the mother had beaten them, once with an electrical cord. The mother had taken parenting classes and acknowledged the problem. The court sustained jurisdiction under section 300, subdivisions (a), (b), and (j), and ordered out of home placement for the children. On appeal the evidence was found insufficient to support the rule 5.678(c)(2) finding that there were no reasonable means to protect the children other than removing them from the home because the social study did not identify the reasonable efforts taken to prevent the removal of the children from the home. Reasonable efforts include unannounced visits from DFCS and or a public nurse, and removal of the mother from the home. The matter was remanded for further proceedings.

Similarly, in *In re A.E.* (2014) 228 Cal.App.4th 820, the father disciplined his three-year-old child with a belt. Father was remorseful and stated that he now understood there were better ways to discipline a child. The father was ordered not to stay overnight in the house and saw the child only on monitored visits. The parents had a good relationship with the child. The Second District, Division Eight, reversed the juvenile court's order removing the child on grounds that the abuse was an isolated incident. Also, there were adequate means to protect the child in the minor's home.

Disposition – Placement with Non-Offending Parent. In *In re Patrick S.* (2013) 218 Cal.App.4th 1254, the mother had left the father, taking the minor with her, and not maintaining contact with the father. Father, who lived in Washington state, searched for the minor and paid child support. When jurisdiction was sustained due to the mother's mental condition, the father came to California. His home was found appropriate for the 13-year-old minor, but the juvenile court denied placement under section 361.2 because the minor preferred to live with his foster parents. The Fourth District, Division One, reversed. Although the minor of this age was entitled to have his wishes considered, the child's preference is not the deciding factor. Also the father's three month deployment by the Navy did not establish detriment because there was an adequate plan for the minor's care during that time period.

In re Abram L. (2013) 219 Cal.App.4th 452, presented a similar result, the Second

District, Division Three, stating that the reviewing court would not imply findings of detriment from a silent record, as *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1824-1825, requires an express consideration of the terms of section 361.2.

In *In re Nikolas T.* (2013) 217 Cal.App.4th 1492, the Fourth District, Division One, held that the parent need only be "non-custodial," not necessarily "non-offending," to obtain consideration for placement under section 361.2. In this case the mother had placed the child with the Mississippi Department of Human Services in 2001, and the maternal aunt was appointed guardian. In 2012, in California, a petition based on physical abuse was sustained. The aunt did not seek services, and mother sought placement. The juvenile court denied the mother's request, in part because the minor did not wish to move to Mississippi and did not wish to be placed with her mother. The Fourth District affirmed. Section 361.2 governed because this was an original petition. The detriment finding was supported by the minor's wish not to be moved out-of-state and the fact that the mother had witnessed some of the abuse but denied that it had occurred.

In re D'Anthony D. (2014) 230 Cal.App.4th 292, came to a similar result. The Second District, Division Three, found that the juvenile court erred in requiring the non-custodial father to be "non-offending" to be considered for placement. But the error was harmless as the court had also found clear and convincing evidence that placement with the father would be detrimental, finding that he had physically abused one of the minors.

In *In re Suhey G.* (2013) 221 Cal.App.4th 732, the Second District, Division Two, held section 361.2 applied in post-dispositional proceedings even to a father who had come forward late in the proceedings where the Department failed to provide him with notice of the proceedings at his last known street address. This case was not governed by *In re Zacharia D.* (1993) 6 Cal.4th 435, nor was the father required to file a section 388 petition because the Department's failure to provide notice prevented father from timely requesting custody earlier in the proceedings.

But in *In re John M., supra*, 217 Cal.App.4th 410, 420, discussed above in the cases on jurisdiction, the Second District, Division Two, held that a father who had shared custody with the mother and who participated in domestic violence did not qualify for custody under section 361.2 because he was not the "non-custodial" parent and was not "non-offending." Also he had not asked for custody at trial which forfeits the issue on appeal.

Disposition – Denial of Services – Prior Failure to Reunify. In *In re D.H.* (2014) 230 Cal.App.4th 807, the juvenile court bypassed services to the father based upon findings pursuant to sections 361.5, subdivisions (b)(10) and (11), that he had not made reasonable efforts to treat the problems leading to the removal of the minors' half-siblings. The Third

District found this basis for bypass did not apply because the problems to be addressed by the father in the present case – alcohol abuse, anger management and domestic violence – were different than the issues in the half-siblings' case – unsafe and unhealthy conditions in the home with no showing of domestic violence or substance abuse. Thus, there was an insufficient showing that the father had not made reasonable efforts within the meaning of subdivisions (10 and (11).[7]

Disposition – Denial of Services – Severe Abuse. In *In re A.M.* (2013) 217 Cal.App.4th 1067, the juvenile court had sustained jurisdiction under section 300, subdivision (e), as to 11-week-old A.M., and S.M., his four-year-old sister, after A.M. had suffered multiple unexplained fractures while in the care of the parents. Both parents were denied services under section 361.5, subdivision (b)(5). Later mother successfully petitioned for a modification of the order to provide services (because she had obtained a restraining order against the father and was taking classes and this could result in reunification). The Department and the minor appealed. The First District, Division One, reversed. Section 361.5, subdivision (c) provides that services may not be ordered in this situation unless the court expressly finds on clear and convincing evidence – as to S.M. that services are likely to prevent future abuse or that a failure to reunify will be detrimental, and – as to A.M. that reunification was in the child's best interests. At the time of the hearing section 388 did not expressly require these findings, but section 361.5 applies on section 388 petitions.[8] Also, the evidence was insufficient to support such findings in this case in light of the mother's continued denial of knowing any source of S.M.'s injuries.

In *K.F. v. Superior Court* (2014) 224 Cal.App.4th 1369, the reviewing court granted extraordinary relief on the basis that the juvenile court erred in denying services for severe physical abuse without making the finding by clear and convincing evidence. The corresponding finding under section 300(e) at jurisdiction had been based solely on a preponderance of evidence.[9]

Disposition – Denial of Services – Conviction of Violent Felony. In *In re J.S.*, *supra*, 228 Cal.App.4th 1483, discussed in the section on disposition out of the parent's home, the Fourth District, Division Two, held the reunification service bypass provision under section 361.5, subdivision (b)(12) for those parents convicted of violent felonies within the meaning of Penal Code, section 667.5, subdivision (b), applies to out-of-state convictions (relying on *People v. Hanlon* (1996) 14 Cal.4th 101). In this case the father had been convicted of second degree sexual abuse in Kentucky – a misdemeanor – but the offense contained all of the elements of the California felony offense, lewd and lascivious acts on a child under 14, so the offense qualified for the bypass of services.

Disposition – Denial of Services – Sex Registration. In *In re S.B.* (2013) 222

Cal.App.4th 612, the father was convicted in 2010 of violating Penal Code section 288, subdivision (c)(1). In 2012, S.B. was removed from her parents' care, and father was denied reunification services because of his registration requirement. On appeal, he contended that section 361.5, subdivision (b)(16) did not apply to him and there was insufficient evidence showing that services would not be in the child's best interests. The Fourth District, Division Two, affirmed. Although California has not fully implemented the federal Sex Offender Registration and Notification Act (SORNA), the sex offender's duty to register already operates to require sex offender registration. Also, even though the court erred in considering unsubstantiated allegations of sexual abuse, father had a long history of criminal conduct and substance abuse, and he lacked insight as to the factors contributing to this problem. There was not clear and convincing evidence that reunification services would be in S.B.'s best interests.

Disposition – Order of Services under Section 361.5, subdivision (c). In *In re G.L.* (2014) 222 Cal.App.4th 1153, the juvenile court ordered services to a mother when jurisdiction was sustained due to her substance abuse and she had previously failed to rehabilitate within the meaning of section 361.5, subdivision (13). The Department appealed, and the Fourth District, Division One, affirmed. The juvenile court had not abused its discretion in finding reunification was possible where the record showed the mother was receiving services, had made serious efforts in the rehabilitation program, and her recent interactions with G.L. were positive. Although there was evidence in the record supporting the opposite finding, the court's determination was not arbitrary or capricious.

Review Hearings – Return of Child to Custody of Parent. In *In re E.D.* (2013) 217 Cal.App.4th 960, the Third District reversed an order of the juvenile court made at the 12-month review hearing ordering continued placement of the nine-year-old child with his maternal aunt. The appellate decision remanded the matter with directions that the child be placed with his father under a family maintenance plan. Jurisdiction had been sustained because of domestic violence between the father and mother. The father had succeeded with all of his services which included conjoint therapy. Father's reunification plan had eventually been modified to allow overnight visits. An ICPC report found his home in Nevada acceptable. The minor liked his father and his father's new family, and wanted to reside with them. The Department concurred. There had been contrary evidence given by the maternal aunt and the CASA worker. The Third District, in reversing the order of continued out-of-home placement, held the order not supported by substantial evidence of a risk of detriment. The risk of detriment does not require the parent to demonstrate an ideal home, but only that the parent has gained a grasp of parenting. The reviewing court assumed the juvenile court believed the return of the minor to his father's custody would jeopardize his emotional harm, but this finding had no basis in the evidence.

Review Hearings – Procedure. May the party having the burden reopen? In *In re Mary B.* (2013) 218 Cal.App.4th 1474**,** a dependency petition was sustained under section 300, subdivision (b), alleging the parents were living together and the minor had been exposed to a violent confrontation between them. The child was placed in foster care. At the contested six-month review hearing, the social worker changed her recommendation twice, at one point recommending return of the minor to the father. Father had made substantive progress on his plan, and overnight visits were going well. But the court denied the father's motion at the end of the Department's case and continued the matter at the request of the mother's counsel. Ultimately, the Department returned to its original position – recommending continued placement because the new addendum to the report showed the father's increasingly aggressive conduct during the overnight visits, and the juvenile court so ordered. On appeal, the Fourth District, Division One, affirmed. There was no error in granting the continuance and permitting the Department to reopen its case. Also, there was substantial evidence of a risk of detriment as the parents continued to engage in domestic violence in the minor's presence and failed to comply with court orders.

Review Hearings – Reasonable Services. In *In Taylor J.* (2014) 223 Cal.App.4th 1446, the mother's services were terminated at the 18-month review hearing because she had not completed her court-ordered counseling services. On appeal, she contended the evidence supporting the reasonable services finding was insufficient. The Second District, Division One, agreed and reversed. Mother had not completed her domestic violence counseling, but DCFS had not adequately instructed her on where to go for counseling, and did not make sure the services were affordable. The Department must make good faith efforts to provide services reasonable to each family's unique needs (citing *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010). As DCFS had not made a good faith effort to provide reasonable counseling services for mother, the court should not have terminated services. In this situation the court may extend services for an additional six months past the 18-month limitation on services. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 975.)

In *In re Jaden D.* (2014) 229 Cal.App.4th 1277, the First District, Division Four, held that a reasonable services finding need not be made at a hearing monitoring a placement with a non-custodial parent under section 361.2. When a child is not placed out of the family home, services are discretionary. Review hearings in this situation should focus on custody issues and whether there is a continued need for supervision.

Review Hearings – Extension of Further Services. The County's petition for extraordinary relief in *San Joaquin Human Services v. Superior Court* (*M.E.*) (2014) 227 Cal.App.4th 1215, challenged the juvenile court's extension of services beyond 18 months from the date of initial detention when the minor was over three years of age. Jurisdiction had been sustained under section 300, subdivision (b), due to the developmentally delayed

parent's inability to care for the child, and reunification services were ordered. Two evaluating psychologists found the mother was not capable of safely parenting the minor. The court ordered additional services because of the lapse of time between the first and second evaluation. The Third District granted the petition. When services are to be extended beyond 18 months from the minor's original detention, section 366.2, subdivision (b), requires a finding that services are in the minor's best interest and the child may be returned within the extended time period. An exception to this is when there is a finding that reasonable services have not been offered. However, the second evaluation, not challenged below, concluded that services would not be productive within the extension.

Review Hearings – Termination of Jurisdiction. In *In re Maya L.* (2014) 232 Cal.App.4th 81, the minor had been placed with the father at disposition. At the six month hearing the juvenile court awarded custody to him and terminated jurisdiction. On appeal the mother argued that under section 364, the juvenile court should have made a detriment finding. The Second District, Division Seven, rejected this contention and affirmed. Section 366.21, subdivision (e) rather than section 364 governed, and the only question was whether juvenile court jurisdiction was needed. There was substantial evidence supporting the award of custody and the termination of jurisdiction.

But in *In re I.G.* (2014) 226 Cal.App.4th 380, the Third District reversed a juvenile court order terminating jurisdiction over a 14-year-old minor who had run away from her placement. The reviewing court agreed with the argument of the minor's counsel and the guardian ad litem that the minor remained at risk and in need of supervision.

And in *In re J.F.* (2014) 228 Cal.App.4th 202, the Second District, Division Five, affirmed an order continuing jurisdiction at a section 364 review hearing, notwithstanding the Department's recommendation that jurisdiction be terminated. The question was whether the evidence showed conditions exist that would justify jurisdiction. Here the evidence was that mother, who had a learning disability and secondary disabilities, lived in a group home and there was no evidence of her ability to live independently. The report said mother was a work "in progress," continuing to struggle with parenting her child. Where the evidence supports continued jurisdiction it would be contrary to the purpose of section 364 to dismiss jurisdiction solely because the Department so recommended.

In *In re A.B.* (2014) 230 Cal.App.4th 1420, the juvenile court had removed the minors from the mother and placed them with the father pursuant to section 361.2, subdivision (b)(2), with an order that the Department conduct home visits and report back within three months. The mother was denied services, and that order was affirmed. The juvenile court subsequently issued orders denying services to mother and terminating jurisdiction as to

one minor. The mother appealed, arguing that the court deprived her of due process in not according her a contested hearing. The First District, Division One, affirmed. It was in the court's discretion to order a contested hearing in this situation and to require an offer of proof. The services issue contained in the mother's offer of proof had been addressed in the previous hearing, so the mother was not deprived of due process.

Modification Petitions – Section 388 – Seeking Reunification Services. In *In re L.S.* (2014) 230 Cal.App.4th 1183, the court had bypassed services under section 361.5, subdivisions (b)(11) and (b)(13) for a prior reunification failure and resistance to drug treatment. The parents subsequently filed petitions to modify under section 388 to order services. The court denied the petitions on the ground that the parents had not shown by clear and convincing evidence that services would be in the minor's best interests. On appeal, the Third District reversed, finding the juvenile court used the wrong standard. Except as otherwise provided, preponderance of the evidence is the burden of proof in dependency cases. Section 388, subdivision (a)(2) only specifies the higher burden when the bypass was under section 361.5, subdivisions (a)(4) (caused the death of a child), (a)(5) (severe physical abuse of a child under age five), or (a)(6) (severe sexual or physical abuse). There was evidence of changed circumstances and that services would be in the minors' best interests. So the court reversed and remanded for a new hearing.

In *In re J.C.* (2014) 226 Cal.App.4th 503, the mother appealed from the order denying her petition to modify to regain her custody after she had expressed a renewed interest in parenting classes and had achieved sobriety. The minor had been placed with a relative for over two years and was bonded to the relative and her family. Affirming, the Fourth District, Division Three, rejected the mother's citation to In re *Kimberly F*. (1997) 56 Cal.App.4th 519, which requires the juvenile court to weigh three factors in determining whether to grant a petition to modify under section 388. *J.C.* holds that use of the *Kimberly F.* standard is inappropriate after reunification has been terminated, based on the holding of the California Supreme Court in *In re Stephanie M.* (1994) 295, that the child's interest in a stable placement is paramount at this stage. Under this standard the trial court did not abuse its discretion in denying modification.

In *In re Ernesto R*. (2014) 230 Cal.App.4th 219, an appeal from a parental rights termination under section 366.26, the mother argued she was deprived of effective assistance of counsel in the juvenile court when her trial counsel failed to file a section 388 requesting reunification services and liberalized visitation in light of the change in circumstances that the mother now had housing and regular visits, had become involved in treatment programs, and had negative drug tests. The Second District, Division Six, affirmed. Even assuming a change in circumstances, there was no showing that reunification services and liberalized visits would be in the minor's best interest. Counsel

was not required to file a futile section 388 petition.

In *In re G.B.* (2014) 227 Cal.App.4th 1180, jurisdiction was based on the severe abuse of the infant minor, and services were denied. The mother filed a petition under section 388 requesting reunification services based on having made some progress in treatment. This petition was denied without a hearing. Six weeks later mother filed a second petition alleging that she had made further progress in treatment and was doing her other services. She alleged the minors were closely bonded to her and they would suffer trauma if separated from her. The court also denied a full hearing on the second petition, and denied the petition on the grounds the mother was making minimal progress and the minors were doing well in placement. Parental rights were terminated at the same hearing. The mother appealed the denial of both section 388 petitions. The First District, Division Four, affirmed because – as to the first petition – the record provided no basis for the juvenile court to make a finding that services were likely to prevent further abuse or were in the minor's best interests because mother was still denying the role of each parent in the abuse. As to the second petition, any error in not conducting a hearing was harmless, as the finding in the contemporaneous hearing under section 366.26 of a lack of detriment to the minor weighing against adoption also satisfied the issue of whether the children would benefit from services.

Modification Petitions – Section 388 – To Terminate Reunification Services. In *In re J.P.* (2014) 229 Cal.App.4th 108, after services had been ordered for the father, the minor filed a modification petition seeking to suspend the father's visits or terminate services. The juvenile court denied the petition on the grounds that the statutory scheme required review at a six-month review hearing. The minor appealed, and the Fourth District, Division One, found the court had erred in refusing to consider the modification petition. Section 388, subdivision (c)(1) provides for the petition in this context, as here, there was a prima facie showing that the actions of the parent created a substantial likelihood that reunification will not occur. However, the error was harmless in that there was no challenge to the juvenile court's later findings at the six-month review hearing that visitation was not detrimental to the minor and that reunification was likely to succeed within six months.

Modification Petitions – Section 388 – To Terminate Probate Guardianship. In *A.H. v. Superior Court* (2013) 219 Cal.App.4th 1379, the First District, Division Four, held that minors seeking to terminate a Probate Code guardianship on the grounds that termination is in their best interest, properly proceed under section 388. The court distinguished *In re Angel S.* (2007) 156 Cal.App.4th 1202, holding that section 728 is the proper means, on the grounds that Angel S. concerned a petition filed by the Department.

Modification Petitions – Section 388 – For Placement With Non-Custodial Parent. In *In re Jonathan P.* (2014) 226 Cal.App.4th 1240, a non-custodial parent who could not be located at the time of the initial disposition when the minor was placed, later used a section 388 petition to seek placement under section 361.2 and or reunification services, after his previous requests for placement or reunification services had been denied at the six-month review hearing. The juvenile court denied the petition on the grounds that the minor had left his placement and could not be found. On review, the Second District, Division Seven, found the court's failure to consider the father for placement harmless as the minor could not be found and the juvenile court was unable to make any determination concerning detriment. However, as the father had been located within six months of the child's placement out of the family home, section 361.5, subdivision (d) required the father be considered for services. The matter was remanded with directions ordering the Department to evaluate whether any services could be provided to the father while Jonathan P. could not be found.

Parental Rights Termination – Beneficial Relationship Exception.[10]

Parental Rights Termination – Long Term Foster Care Exception. In *In re I.R.* (2014) 226 Cal.App.4th 201, the court found the beneficial relation and sibling detriment exceptions did not apply, but selected a plan of foster care pending resolution of an infant sibling's case. The court scheduled a new section 366.26 hearing in six months. The minors appealed. The Third District reversed, holding that there was no statutory provision for continuing the section 366.26 hearing and the evidence did not support an exception to the plan of adoption. The court directed the juvenile court to vacate the orders and enter an order terminating parental rights.

Parental Rights Termination – Unfitness or Detriment Finding. In *In re G.P.* (2014) 227 Cal.App.4th 1180, the juvenile court terminated parental rights as to the minors, never having made a finding that placement with him would be detrimental to the minors. Father had been incarcerated in a federal prison in Indiana since 2008 and would continue to be imprisoned until 2019. The Fourth District, Division One, affirmed. The father's counsel had represented in a 2013 hearing that a detriment finding was unnecessary as the father had never had custody. This constituted invited error. And any error was harmless as the father's 2019 release date was evidence of detriment, and "it would be nonsensical to send the case back" for an explicit finding.

Paternity – Standing. In 2013, cases allowed both presumed and biological parents to litigate paternity and presumed status. In *In re Jovanni B.* (2013) 221 Cal.App.4th 1482, the Second District, Division Four, held that John, who lived with mother at the time of Jovanni's birth and signed a voluntary declaration of paternity (VDOP), but who had been

excluded from the proceedings when another man was found to be the biological father, had the right to be present in the juvenile proceedings and litigate his request for presumed parent status and the resolution of paternity claims under section 7612.

In *V.S. v. M.L.* (2013) 222 Cal.App.4th 73, a paternity case, the petitioner, V.S. impregnated the mother, but she married Roger one month before the child was born. The trial court found V.S. did not have standing and dismissed the petition. The First District, Division 3, reversed. V.S. had standing to seek adjudication, not only under current version of Family Code, section 7630, but also under *Adoption of Kelsey S.* (1992) 1 Cal.4th 816. (The court distinguished *Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, as this was not a case in which there was a marriage at the time of conception.) Roger, a presumed father, was also entitled to seek adjudication.

Paternity – *Kelsey S.* Showing. In *In re D.S.* (2014) 230 Cal.App.4th 1238, the mother discovered in February or March of 2010, she was pregnant with D.S., the biological child of A.V., who was incarcerated. In March she moved in with her new boyfriend, B.E., who cared for the child before and after birth. In 2012, the mother's children were removed due to the mother's substance abuse. A.V. visited three times but mother limited the visits because A.V. had threatened B.E. The juvenile court found B.E. (who also had a history of substance abuse and domestic violence) to be a presumed father under Family Code, section 7611, subdivision (d), but ultimately resolved the competing paternity interests in favor of A.V. after finding him a presumed father under *Kelsey S.*, *supra*, 1 Cal.4th 816. Mother appealed and the Sixth District reversed. A.V.'s attempts to litigate paternity and to visit with appellant were insufficient. His own behavior precluded him from carrying out his parental responsibilities. As the juvenile court found that A.V. had not done all he could to hold the child out as his own, this too precluded him from becoming a *Kelsey S.* father.

Placements. The Second District, Division Eight, in *In re E.T.* (2013) 217 Cal.App.4th 426, 438, found that the trial court abused its discretion under section 361.3 in placing the infant child with a father who had only seen the minor a few times since birth and who had not qualified as a presumptive father and who had a substantial criminal history, rather than placing the child with her maternal grandmother who had raised her. In setting placement preferences, section 361.3 does not list parents. Instead, placement with parents is governed by other provisions such as section 361.2.

Affirming a juvenile court post-dispositional order denying the minor's request to be placed with her half-sibling under section 361.4, based on the half-sibling's 1995 conviction in Oregon of voluntary manslaughter, the Second District, Division Three, in *In re H.K.* (2013) 217 Cal.App.4th 1422, held that the Oregon conviction qualified as a

violent felony in California within the meaning of Health and Safety Code section 1522, subdivision (g)(1)(A)(I), prohibiting placement. As to the minor's constitutional challenge that the order violated her fundamental right to maintain family ties, the court found there was no fundamental right where the half-siblings had no previous relationship other than a biological one (and this case was not controlled by the authorities governing existing relationships). The court found a rational basis in the determination not to place children with a person who had killed intentionally.

In *In re A.F.* (2014) 227 Cal.App.4th 692, appellant was a de facto parent to the twin dependents, medically fragile, babies. They were placed with her in this dependency proceeding for fourteen months. In February of 2013, shortly before the section 366.26 hearing, the Department removed the children solely because appellant had expressed a doubt about adopting. Then, at the March 2013 section 366.26 hearing, appellant sought to be heard on a section 388 petition seeking return of the children. The court refused the request for return of the minors, terminated her de facto parent status, and denied her request for appointment of counsel. The Fourth District, Division Two, in reversing the placement decision, did not need to reach the issue of denial of the petition for modification, instead holding the juvenile court erred earlier at the time of the change of placement. The juvenile court lost sight of the role of the de facto parent: providing information concerning the minors' best interest, as well as the question of the best placement for them. The court should have heard appellant on these issues. The case was remanded for the court to consider what whether it was in the minors' best interests to be returned to appellant and her family, and for that family to be given a chance to adopt them, based on current circumstances.

In *In re Jayden M.* (2014) 228 Cal.App.4th 1452, the Third District held the procedural requirements to change placement in section 366.26, subdivision (n)(3)**,** did not apply to the change of placement in this case, made prior to the section 366.26 hearing, as subdivision (n) applies only when the child is moved after the section 266.26 hearing.

Visitation. In *In re E.T.*, *supra*, 217 Cal.App.4th 426, 439, the Fourth District, Division One, finding the juvenile court abused its discretion in not placing the child with maternal grandmother, also found the court erred in the visitation order in providing only for the Department to "create a detailed visitation schedule." The court is permitted to delegate details to the Department, but the order should provide some indication of how often mother's visits will occur, citing *In re S.H.* (2003) 111 Cal.App.4th 310, 319.

In *In re D.B.*, (2013) 217 Cal.App.4th 1080, the parents had court ordered visits with their children who had been placed with a relative in a long term plan. The juvenile court granted a petition for modification under section 388 and terminated the visits because the

children were suffering severe anxiety about being separated from the caretaker. There was also positive parent-child interaction during the visits. The parents appealed, arguing the evidence was insufficient to support the order. The First District, Division Four, affirmed, holding that the decision is reviewed for abuse of discretion. Although there was evidence supporting continued visits, it could not be said that the order terminating visits exceeded the bounds of reason.

In *In re J.T.* (2014) 228 Cal.App.4th 953, the Second District, Division Eight, affirmed orders granting visitation to the paternal grandmother at the time that jurisdiction was terminated and subsequently denying the mother's petition to modify. The child had been placed with the grandmother during the reunification period, and section 362.4 authorizes making such a visitation order with a person of importance to the minor with whom the minor has lived and cared for with the permission of the biological parent. The parent's wishes are accorded great weight, but visits may be ordered when in the child's best interest. The juvenile court is not required to apply the differing standards set forth by Family Code section 3104, as the juvenile court is responding to the special problem of abused or neglected children. And for this reason, section 361.2 does not violate the parent's fundamental parenting rights. There was no evidence supporting the mother's position that if allowed to visit J.T., the grandmother would make false allegations about her or would engage in behavior detrimental to the minor.

Restraining Orders. Section 213.5 authorizes a juvenile court to issue restraining orders when not doing so would jeopardize the children or the person having care of the children. In *In re G.Q.* (2013) 219 Cal.App.4th 355, the Second District, Division One, found a three-year order restraining the father from having any contact with the children except during monitored visits was unsupported by sufficient evidence. At the hearing jurisdiction had been sustained based on domestic violence, including an incident in which father had struck the mother in the presence of one of the children. The children were placed with the mother under a plan of family maintenance. On appeal, the father did not challenge that part of the order requiring him to stay away from the mother and the family home. The father had not engaged in any violent or inappropriate conduct after the original incident. As the children enjoyed the visits with father and said they did not fear him, there was no basis for the order that he stay away from them.

Minors and Non-Minor Dependents; Minor's Counsel. The Legislature and the courts have shown increasing interest in the services available when the minor turns 18. In *In re Nadia G.* (2013) 216 Cal.App.4th 1110, 1123, the Second District, Division Three, held that the juvenile court erred in terminating jurisdiction over the objection of counsel for the 19-year-old minor. Section 391 requires the social study address the issue of whether termination of jurisdiction would further the minor's best interests, and the information,

documents and services that had been provided the minor. Although there may have been support in the record for termination, section 391 disallows it without the report.

On and after January 1, 2012, section 11400 and 11405 provide that non-minor dependents and non-minor former dependents may continue to receive Aid to Families With Dependent Children (AFDC), under certain conditions after turning age 18. A non-minor dependent who is under guardianship must facilitate that payment through the guardian; so, in *In re A.F.* (2013) 219 Cal.App.4th 51, the First District, Division Five, held that in the where the guardian dies, the juvenile court should appoint a successor guardian rather than having the money paid directly to the former dependent.

In *In re Shannon M.* (2013) 221 Cal.App.4th 282, a dependent was returned to her mother's care immediately before her 18th birthday. The juvenile court dismissed jurisdiction under section 364, but then she was abandoned by Mother right after the minor turned 18. On appeal, the First District, Division Five, held that section 391, which requires the juvenile court to conduct a hearing and determine whether termination of jurisdiction is in the non-minor's best interest before terminating jurisdiction, applies to any non-minor dependent whether or not the minor fits into the definitions provided in section 11400 (e.g., a non-minor dependent in foster care).

Assessments under Section 241.1. *In re M.V.* (2014) 225 Cal.App.4th 1495, M.V. was a dependent child due to her mother's refusal to care for her due to her suicidal tendencies and aggressive behavior. A delinquency petition was filed under section 602, alleging she had agreed to engage in an act of prostitution. The juvenile court ordered a section 241.1 report with respect to whether M.V. should proceed as a ward or as a dependent. The social services department and the probation department agreed she should be adjudged a ward because of the need for a more secure placement. The juvenile court adjudged her a ward under section 602, dismissed the dependency petition, and ordered an out-of-home placement. The First District, Division One, affirmed. When the minor qualifies both as a dependent and as a ward, the juvenile court is to determine which status will serve the best interests of the minor and the protection of society. The juvenile court has broad discretion in determining which status serves those needs. Here, the minor had absconded from four placements and had been subject to sexual exploitation. The court did not abuse its discretion in deciding to enable a more secure placement.[11]

Confidential Proceedings and Records. Concerning confidential proceedings, the Second District, Division Eight, in *In re* A.L. (2014) 224 Cal.App.4th 354, disapproved the blanket order of the juvenile court in Los Angeles providing for press access except when an objection had been made and the objector established detriment. This local standard conflicted with section 346 which provides for that access be decided on a case-

by case basis. The dissenting opinion would find the pre-trial press access order not appealable from the dispositional order.

Concerning confidential reports, the Sixth District in *Gonzalez v. DSS* (2014) 223 Cal.App.4th 72, concluded the complaint of child abuse should not have been designated, "substantiated," because the mother's disciplining of her 12 year old with a wooden spoon, leaving bruises, was not shown to be other than "reasonable" within the meaning of Penal Code sections 11165.3 and 11165.4 (child abuse). Other means of discipline had been attempted. The juvenile court was directed to either conduct a new hearing or designate the report, "unfounded."

Appeals and Writs – Appealable Orders – Section 331 Orders. In *In re Michael H.* (2014) 229 Cal.App.4th 1366, the Second District, Division Seven, held that a juvenile court order declining the father's request for an order under section 331 compelling the Department to commence dependency proceedings could not be appealed. Neither section 331 nor 395 expressly authorize an appeal from this decision, and the Legislature generally makes express provision for appeals of orders.

Appeals and Writs – Standing. In *In re J.C.* (2014) 222 Cal.App.4th 1489, the mother appealed the decision of the juvenile court terminating jurisdiction when the minor turned 18. The Sixth District dismissed the appeal. A mother who is not receiving reunification services does not have standing to appeal an order dismissing jurisdiction over an adult simply based on her interest in the companionship of the adult child.

In *In re Jayden M.*, *supra*, 228 Cal.App.4th 1452, discussed in the section on placements, the Third District held the parents did not have standing to challenge placement errors after reunification was terminated, citing *In re Cesar V.* (2001) 91 Cal.App.4th 1023.

Appeals and Writs – Mootness. In *In re E.T.*, *supra*, 217 Cal.App.4th 426, the Fourth District, Division Eight, in ultimately finding the juvenile court had abused its discretion in placing the child with the alleged father, rejected his arguments that the issue had been mooted by the subsequent order removing the child from his care. The court agreed with the mother's contention that the vacated order had continued collateral consequences – a possibility that a court in the future would erroneously draw from the order placing with the father that he was a presumptive father – which was reason enough to address the placement issue.

But in *In re A.B.*, *supra*, 224 Cal.App.4th 1358, discussed above in the section on notice, the Second District, Division One dismissed the appeal as moot, holding relief

could not be provided for improper notice to the parent of the original dependency proceeding when the juvenile court had also independently obtained jurisdiction on a subsequent petition.

Appeals and Writs – Writ Requirement on Setting Orders. In *In re A.H.* (2013) 218 Cal.App.4th 337, the Sixth District dismissed the appeal by parents who wished to raise an appeal from the order terminating their parental rights issues from the 18-month review hearing setting the section 366.26 hearing. The parents were not excused from the writ requirement per rules 8.450 and 8.452. They did not receive oral notice of the writ requirement only because they left the courtroom before the oral advisement was made. Written notice was sent to their address of record within the meaning of section 31.1, subdivision (a), and 5.534, subdivision (m).

A different result occurred in *Maggie S. v. Superior Court*, *supra*, 220 Cal.App.4th 662, discussed in the section on jurisdictional issues, in which the mother had not filed a petition for extraordinary relief. She had been present at the setting hearing and was not orally advised in open court of the writ requirement. The Second District, Division One, construed her appeal to be a timely filed petition for extraordinary relief.

Appeals and Writs – Disentitlement Doctrine. In *In re L.J.*, *supra,* 216 Cal.App.4th 112, 1137, discussed in the section on juvenile court jurisdiction, the Third District requested supplemental briefing on whether the appeal should be dismissed because the parents had absconded with the child and concealed her from the courts for a year, but ultimately concluded the conduct did not bar them from appeal because the conduct occurred before the appeal was filed, a significant distinction from *In re Kamelia S.* (2000) 82 Cal.App.4th 1224, in which the appeal was dismissed under this doctrine.

Appeals and Writs – Waiver. In *In re A.R.*, *supra*, 228 Cal.App.4th 114, discussed in the section on failure to protect, the Second District, Division Eight, noted that in the mother's appellate challenge to the sufficiency of the evidence, that her leaving the child with the father was not the major part of the grounds for jurisdiction based on the father's sexual abuse of the children and driving while intoxicated with the children in the car, the mother omitted discussion of the childrens' lack of food, clothing, and dental care, to which she had contributed. The mother was not permitted to not discuss important evidence, and this resulted in a waiver of the issue on appeal.

ENDNOTES

1. This article covers developments from May 6, 2013 to January 1, 2015. The article is published at

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

3. The majority acknowledged the case did not resolve situations where the parent did not have custody but had visitation rights or paid child support. Justice Breyer concurred separately, noting other issues that were not resolved in this case. (*Adoptive Couple v. Baby Girl*, *supra*, 186 L.Ed.2d at p. 751, Breyer, J., conc.)

4. In 2013 and 2014, the state appellate courts found several errors in ICWA notice. In *In re Jovanni B*., *supra*, 221 Cal.App.4th 2013, discussed in the section on paternity, there was also error in the juvenile court's minute order, stating "Court finds no reasons to believe ICWA applies to this case," when in fact the court had directed the Department to interview the mother on her claim to Vergo Indian heritage. In *In re L.S.*, *supra*, 230 Cal.App.4th 1183, the Third District remanded for further clarification whether mother had Blackfeet (federally recognized) or Blackfoot (not federally recognized) heritage. In *Guardianship of D.W.* (2013) 221 Cal.App.4th 242, a parent's appeal of an order appointing a guardian, the First District, Division Four, reversed because the court had not waited 60 days after notice was sent to the Karuk tribe, as required by rule 7.1015(c)(9). (The tribe had properly intervened in the juvenile court under 25 U.S.C, 1911, section (c) and reported the child was enrolled – and ultimately determined the child was an Indian child.)

5.The court noted that DSM IV has been superceded by DSM and the criteria for substance abuse have changed. (*In re Christopher R*., *supra*, 225 Cal.App.4th 898.)

6. Cases finding insufficient notice include *In re A.B.* (2014) 224 Cal.App.4th 1358.

7. But the juvenile court's decision was affirmed. In the unpublished part of the opinion, the Third District held the juvenile court's decision bypassing services was justified because the court had found the father's current incarceration made services detrimental to the minors.

8. The opinion noted section 388 was amended in 2012 to expressly incorporate the requirements of section 361.5. (*In re A.M* , *supra*, 217 Cal.App.4th at p. 1067.)

9. Also, the jurisdictional finding was supported by substantial evidence. (*K.F. v. Superior Court*, *supra*, 224 Cal.App.4th 1369.)

10. Cases finding evidence rejecting the beneficial relation exception to adoption per section 366.26, subdivision (c)(1)(B)(i) include *In re G.B.*, *supra*, 227 Cal.App.4th 1180, discussed in the section on modification petitions.

11. *In re M.V.*, *supra*, 225 Cal.App.4th 1495, also discusses the required contents of a section 241.1 report.