RECENT CASES
and NEW LEGISLATION

presented by
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JURISDICTION & DISPOSITION

Pending in the Supreme Court

In re N.R. (S274943, review granted 8/24/22)

(1) What is the definition of "substance abuse" for purposes of declaring a child a dependent under Welfare and Institutions Code section 300, subdivision (b)(1)?

(2) Where a child is under the age of six, does a finding of parental substance abuse alone provide sufficient evidence to warrant juvenile court jurisdiction?

In re G.Z., 85 Cal.App.5th 857 (2nd Dist. Div. 8 (Los Angeles County) 11/30/22)

Mother took 10-month-old child to the hospital several times because of repeated vomiting. MRI and CT scans showed that the child had two older subdural hematomas and one newer one. The hospital called CPS.

The resulting petition alleged that child was diagnosed with the hematomas, that the injuries were consistent with "nonaccidental trauma," that such injuries would not occur but for "deliberate, unreasonable, and neglectful acts," that mother failed to obtain timely necessary medical treatment, and that the child's injuries where consistent with nonaccidental trauma and mother should have known that the child was being abused and failed to protect him.

Later medical workups established that the child had no bruising or other signs of external trauma and had no past or present broken bones or other signs of physical abuse but that the child did have macrocephaly and a cyst. A hospital pediatrician noted that possible causes were trauma or a rupture of the cyst but said that she could not rule out nonaccidental/inflicted trauma. The doctor noticed also that mother was diligent in seeking consistent pediatric care for the child and well as continuing to seek care for his vomiting symptoms.

Mother explained that the child had recently had two falls. One was several months ago where he fell of a bed onto a carpeted floor. He cried a little but otherwise seemed fine. The other was more recent when he fell onto a kitchen floor while grandmother was letting walk on a cabinet while she was holding his hands. Other family members confirmed that they had seen these incidents or were told about them at the time that they happened.

Mother's expert opined that the child's macrocephaly, cyst, and increased subarachnoid spaces and neomembranes in his head made him susceptible to subdural hematomas and that the cyst "bleeds" easily. He found no indication of abuse and there was no evidence that the child was a "shaken baby." The hospital pediatrician indicated that she and mother's expert were essentially saying the same thing.

The child was placed with the formerly noncustodial father. While the child did not develop further hematomas while in father's care, one of the older hematomas increased in size. During the nine months between the detention and the disposition hearing, the court liberalized mother's visitation to unmonitored visits and mother and father informed the court that they had worked out visitation for mother over the Thanksgiving, Christmas, and New Year's holidays. Shortly before the contested jurisdiction hearing began, the court released the child to both parents, subject to DCFS supervision, with the parents sharing custody 50/50.

At the conclusion of the contested jurisdiction hearing, the court cited sec-

tion 355.1(a) and sustained the first (b) count, finding that the child would not have suffered the injuries except for "the unreasonable acts of mother" and that mother did not have a reasonable explanation for the brain bleeds. The court then ordered family maintenance with 50/50 custody. Mother appealed, arguing insufficiency of the evidence and that the juvenile court improperly applied section 355.1 because she had no advance warning that the court intended to rely upon that statute in making its jurisdictional ruling.

The court agreed with mother's argument that the jurisdictional finding was not supported by substantial evidence because DCFS was required to prove that the child's injuries were the result of abuse rather than his preexisting medical condition and cannot fault her for not knowing about those conditions when numerous medical professionals who had seen the child did not diagnose the condition until after her fourth trip to the hospital prompted further tests.

The agency's expert never said that the child's injuries were more likely than not caused by abuse. She said that she could not conclusively rule out abuse but not that the injuries where necessarily caused by abuse. She opined that such injuries in an otherwise healthy infant in the absence of abuse are rare but the child is not an otherwise healthy infant. "He has conditions like macrocephaly, the arachnoid cyst, increased subarachnoid spaces, and neomembranes, which render him more susceptible to spontaneous bleeds or to bleeds through minor non-abusive trauma or normal handling. Expert opinion testimony constitutes substantial evidence only if based on conclusions or assumptions supported by evidence in the record; opinion testimony which is conjectural or speculative cannot rise to the dignity of substantial evidence. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)"

Circumstantial evidence may support a finding of abuse but does not mean that the court may conclude or presume that the parents knew or should have known that the child was injured and how those injuries may have occurred. Just because one doctor stated that she could not categorially establish the cause of the child's chronic/older subdural hematoma as being solely from the cyst or increased subarachnoid space as opposed to nonaccidental trauma does not equate to a finding of abuse or a finding that Mother was neglectful and should have known that the child was injured.

Further by the time of the jurisdiction hearing, custody of the child was split 50/50 between the parents and the child was having unmonitored overnight visits with mother. The court may only take jurisdiction if the risk of harm continued to exist at the time of the jurisdiction hearing. By the time of the jurisdiction hearing, there was no evidence that the child was at a substantial risk of harm from mother.

Noting that there is a split of authority on whether advance notice of an intent to rely on section 355.1 is required, the court rejected mother's argument that she did not have notice that section 355.1 might apply because the allegations of the petition echoed the language of subdivision (a) of that statute.

However, the court agreed with mother that it was improper for the juvenile court to rely on section 355.1(a) to support its jurisdictional findings. When the party against whom the section 355.1 presumption of abuse is employed produces evidence that casts doubt on the truth of the presumed fact, the presump-

tion is rebutted and disappears, leaving the party in whose favor the presumption initially worked to prove the fact in question. Mother's evidence that the child's injuries were not the result of abuse or neglect and were, instead attributable to a medical condition rebutted the presumption. This shifted the burden back to DCFS to prove its allegations that the injuries were the result of abuse or neglect.

While mother's appeal was pending, the court found that supervision was no longer necessary and terminated jurisdiction, awarding the parents joint legal and physical custody. This prompted the court to consider whether the appeal was moot. Noting the case law holding that a dismissal will not moot an appeal challenging jurisdiction findings if the error could have severe and unfair consequences in a future dependency or family law proceeding, the court found that this case was not moot. Mother's briefing on the issue persuaded the court the finding that she had abused the child would stigmatize her for life, that the finding could result in her being listed in CACI, which could affect her career prospects as she hoped to work with children, and that reversal was necessary to allow her to contest inclusion in CACI.

Noting that the child was very young and will remain a minor for another 15 years, the court concluded that it was also possible that there could be future actions concerning the child in the family law context and that father or the family court could rely on the juvenile court findings in making future custody or visitation orders.

§388/388.1

In re Malick T., 73 Cal.App.5th 1109 (2nd Dist., Div.7 (Los Angeles County) 1/16/22)

Eighteen months after the juvenile court terminated mother's reunification services and set the matter for a .26 hearing, mother filed a section 388 petition seeking an additional six months of reunification services with her children. The evidence showed that mother had successfully completed an outpatient substance abuse program and continued to participate in 12-step programs and in individual counseling. She provided documentation confirming her completion of and participation in these programs.

The juvenile court found that mother had demonstrated changed circumstances, but accepted the agency's argument that it lacked authority to order additional reunification services because mother had received all of the services to which she was entitled and the time for services had expired.

On appeal from the denial of her petition, mother argued that the juvenile court misunderstood the scope of its authority to order reunification services and, as a consequence, failed to properly exercise its discretion in considering the merits of her petition.

The court of appeal held that mother "is correct. Although section 361.5, subdivision (a), generally limits family reunification services to a period not exceeding 18 months after the date a child was originally removed from the physical custody of the child's parent, nearly 30 years ago in *In re Marilyn H.* (1993) 5 Cal.4th 295 the Supreme Court held a parent may utilize the section 388 petition procedure to demonstrate circumstances have changed and additional reunification services would be in the

child's best interest. Moreover, section 366.3, subdivisions (e) and (f), expressly authorize the juvenile court at post-permanent plan review hearings to order a second period of reunification services if it would be in the child's best interest to do so."

The agency argued that mother had forfeited her argument that the court abused its discretion because she did not attempt to correct the court when it stated its belief that the court it had no authority to grant mother's petition.

The court of appeal found this argument unpersuasive: "[F]orfeiture generally applies when a party did not alert the juvenile court that he or she objected to an order being made or when a party failed to ask in the juvenile court for relief being sought on appeal, not when, as here, the court has denied a party's request for an order on a legally incorrect ground."

"The Department cites no authority for its position a party who petitions the court for an order based on pertinent statutory authority (here, section 388) and argues in support of the request nonetheless forfeits the issue on appeal if he or she fails to argue the court's denial of the request constitutes an abuse of discretion. Such a rule of forfeiture would be particularly inapt here, where it appears neither the juvenile court nor counsel for any of the parties was acquainted with controlling Supreme Court authority."

"Additionally, 'application of the forfeiture rule is not automatic.' (*In re S.B., supra*, 32 Cal.4th at p. 1293.) Although the Supreme Court has cautioned that an appellate court's discretion to consider forfeited claims in dependency cases should be used rarely and with special care, it has approved the exercise of that discretion in cases presenting an important question of law. (*Ibid*.) Whether the juvenile court may grant a section 388 petition and order additional reunification services for a parent who has already received 18 months of services presents just such a legal issue."

The error was not harmless because mother was asking for additional services—not immediate return. The record showed that mother had regained custody of one child who was doing well, and that, based on mother's ongoing visitation and her own improvement, she had developed such a strong relationship with the children that minors' counsel was arguing that the permanent plan should be guardianship—not adoption.

REVIEW HEARINGS—TIMELINES

Michael G. v. Superior Court __Cal.5th___ (Sup. Ct. (Kruger, J.)å 4/6/23))

The petition was based on father's mental health issues. At the six- and twelve-month review hearings, the court found that the agency had offered reasonable services. The agency recommended termination of services at the 18-month review hearing. The juvenile court found that the agency failed to provide father with reasonable services between the 12- and 18-month review hearings. Father asked the court to continue services under section 352 or section 366.22. The court found that providing father with additional services would be "fruitless," terminated services, and set a .26 hearing. Father filed a statutory writ petition challenging the court's refusal to grant additional services in light of the no-reasonable-services finding. The appellate court affirmed the juvenile court's decision and father filed a petition for review.

The Supreme Court held that if the child cannot be safely returned at the 18-

month review hearing, then section 366.22(a) requires the court to terminate reunification efforts and set the .26 hearing. Although the court must make a reasonable-services finding, its authority to set a .26 hearing is not conditioned upon making that finding.

Section 366.22(b) provides a narrow exception for parents who are in a residential treatment program, institutionalized, incarcerated, or in the custody of Homeland Security, or were a minor or dependent parent at the time of the initial dependency hearing. In those cases, the court may extend services to 24 months if it finds that it would be in the best interests of the child to do so, and if the court concludes that reasonable services were not provided or there is a substantial probability that the child can be safely and permanently returned to the parent within the extended time frame.

Section 366.22(b) does not apply to father because he does not fall within any of the categories listed in subdivision (b). Because subdivision (b) does not apply, subdivision (a)(3) obligated the juvenile court to terminate services and set a .26 hearing regardless of whether reasonable services were provided.

The court rejected father's argument that section 361.5(a)(4)(A) requires an extension of services if the court makes a no reasonable services finding at the 18-month review hearing. Section 361.5 (a)(4)(A) only applies to the people who may be eligible for an extension of services under section 366.22(b), not to all parents.[1]

The court then explained that section 352 provides an "emergency escape valve" for parents because it authorizes the juvenile court to continue "any hearing" beyond its statutorily required hearing date if it finds that there is good cause and that the continuance is not contrary to the interests of the child. This includes the power to continue the section 366.26 hearing. If the juvenile court has the authority to continue the .26 hearing, then it also has the authority to extend reunification services "in the meantime," notwithstanding the 18-month limit. The flexibility offered by section 352 to adjust timelines allows the juvenile court, in extraordinary circumstances [i.e., "good cause"], to "remedy a critical defect in the process or address other unanticipated obstacles to family reunification." However, before it may grant an extension under section 352, the court must determine that the extension is not contrary to the interests of the child.[2]

The court also rejected father's argument that terminating services at 18 months when the parent did not get reasonable services between the 12- and 18-month reviews was unconstitutional. In the court's view, by "giving courts the discretion to extend services beyond [the 18-month-review] in extraordinary circumstances, the statutory scheme allows courts to make case-specific determinations about how best to promote the interests of the child while protecting

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[1] The court disapproved *In re M.F., T.J. v. Superior Court*, and *In re M.S., "*to the extent that their reasoning reflects a different understanding of that statutory provision."

[2] In a footnote, the court recognized that if the parent *never* got reasonable services, the court is barred from terminating parental rights (§366.26(c)(2)(A) and opined that resort to section 352 "may be particularly appropriate in such cases." Many practitioners previously interpreted the cases approving the use of section 352 to extend services as being applicable only to those cases where the parent never got reasonable services.

against the erroneous deprivation of parental rights."

In light of father's lack of consistent and regular contact and visitation with the child, his lack of significant progress in resolving the problems that led to the dependency, and the lack of evidence that father had the capacity or ability to complete his case plan, the juvenile court reasonably concluded that the minor's best interests were served by moving forward with the case. "Where the available evidence reliably demonstrates that further reunification services would be unlikely to succeed, due process does not require that a court delay permanency for the child."

PLACEMENT

Amber G. v. Superior Court, 86 Cal. App.5th 465 (4th Dist. Div. 3 (Orange County) 12/16/22)

The child was placed with Amber at three days old in June 2021 A maternal aunt who lived in Virginia spoke with a social worker shortly after the child was born and indicated that she was interested in placement of the child. The social worker reported in the juris/dispo report that she had submitted ICPC paperwork. In a later report, the SW stated that she had submitted additional ICPC paperwork. The SW told the court in an interim review report that the ICPC was pending and that both the maternal aunt and the caregiver were willing to adopt the child. The court terminated services early in January 2022 under section 388 because father was not participating.

Amber filed a de facto parent request shortly before the scheduled May 2022 .26 hearing. The .26 report explained that the child was doing extremely well in Amber's home, that Amber wanted to adopt the child, and that Amber was willing to have ongoing contact with older siblings who lived in the area who had been adopted by other families as well as with other family members who were interested. She had provided her contact information to the maternal aunt and had heard from her a few times.

The report also explained that the maternal aunt's ICPC evaluation was stalled in January 2022 because the agency had failed to submit additional required paperwork concerning the child. The report identified Amber as the child's prospective adoptive parent. At the .26 hearing in May 2022, the court terminated parental rights.

Approximately two weeks later, the maternal aunt's ICPC was approved. The social worker telephoned Amber to tell her that the agency planned to remove the child and place her with the maternal aunt. Amber hired an attorney and in June 2022, she filed a request for prospective adoptive parent (PAP) status, and an objection to removal under section 366.26(n).

The agency then filed an "Information Only" report telling the court of its plan to place the child with the aunt because her ICPC had finally been approved. It did not file a notice of its intent to remove the child from Amber as required by section 366.26(n). The report said that Amber had been told of the agency's plan and that Amber had told the SW that it was in the child's best interests to remain in her care.

The SW attached the ICPC paperwork to the report. It showed that the aunt had not submitted her ICPC paperwork until February 2022 and that the ICPC was completed on May 17, 2022 (before the .26 hearing). The State of Virginia's report said that the maternal aunt had stated to them that she was only interested in providing foster care until the child could be returned to mother but

was “open to providing permanency” should the situation require it in the future.

The court granted Amber’s request for PAP status and set a hearing on Amber’s objection to removal for the following week. In addition to a trial brief, Amber submitted evidence showing that the aunt had contacted Amber only four times concerning the child over the past year and evidence addressing why it would be in the child’s best interests to stay with Amber. The agency submitted nothing to justify its position,

At the hearing, the county counsel did tell the court that after parental rights had been terminated, the relative preference was replaced by the caregiver preference and stated that the agency’s position was that both home were appropriate, that the aunt’s lack of contact was understandable because she lived on the other side of the country, and that court would have to decide whether it was in the child’s best interests to move. At that point, the court said that it could find that it was in the child’s best interests to “have a relationship with her biological family for the rest of her life.”

At the conclusion of the contested hearing, the court, noting the aunt’s “numerous attempts” before the section 366.26 hearing, ruled that the agency had met it burden to prove that removal is in the best interests of the child. Amber’s counsel indicated their intention to file a writ and the juvenile court stayed the placement change for seven days.

The court of appeal summarized its decision granting the writ petition: “Because a child's best interest evolves quickly, the legislators developed a spectrum of preferences (relative placement preferences, caretaker preferences, and prospective adoptive parent preferences). (§§ 361.3, subd. (c), 366.26,subds. (k) & (n).) These statutorily created preferences are not to be automatically applied and should not be treated the same as evidentiary presumptions. To the contrary, the statutes discussing each preference require the consideration of multiple factors all dependent on an examination of evidence relating to the minor's current circumstances.” Consequently, a reflexive approach that children are always better off with relatives is incompatible with the governing laws, and as was the issue in this case, often unsupported by the evidence.”

The court then discussed each of the placement preferences in turn. With respect to the relative placement preference, it reiterated that the placement preference “is not an evidentiary presumption” in favor of placement with a relative. It only requires that relatives be assessed and considered favorably “subject to the juvenile court’s consideration of the suitability of the relative’s home and the best interests of the child. Citing a law review article, the court acknowledged that while it may be true that relatives will be the first and most likely sources of good loving homes for children who cannot live with their parents, “like any presumption, this will not always be true in reality.” The court also noted that when a placement change to a relative’s home is being considered during the reunification period, the court is required by section 361.3(d) to also consider whether the relative has established and maintained a relationship with the child.”

The court concluded its discussion of the relative placement preference by reiterating that the relative placement preference does not apply after parental rights have been terminated and explaining that, at that point, it is replaced by

the caretaker preference and the prospective adoptive parent preference.

Quoting *In re Lauren R.* at length, the court explained that the caregiver preference applies to applications for adoption before and after the termination of parental rights and that "preference" means that the application of the current caregiver must be processed before any other and, if satisfactory, the home study must be completed before any other adoption application may be processed. The court specifically noted that in *Lauren R.,* the ICPC application of the aunt who was seeking placement was delayed but the appellate court held that the delay did not give the agency or the court grounds to ignore the caregiver preference statute.

The court then explained the history of section 366.26(n) and the legislative intent to limit the removal of a child from the caretaker's home after parental rights have been terminated if the caregiver meets the PAP definition to protect the stability and best interests of vulnerable children. To check the previously unlimited authority of child welfare agencies to change a child's adoptive placement after the termination of parental rights, the legislature created a procedure for quickly addressing any such proposed placement change.

The court "found troubling" the agency's apparent lack of understanding of its duty under section 366.26(n) and the disregard of the short timelines specified in the statute for in resolving the matter. The agency did not initially give the required written notice of its intent to remove the child nor did it use the required Judicial Council forms. Its "Information Only" report contained no discussion of why or whether the proposed removal was necessary or was in the child's best interests. "Given that this case had already been extended long past the statutorily recommended deadlines for newborns (§ 361.5, subd. (a)(1)(A)-(B)), and SSA was aware of the many delays processing [the aunt's] ICPC, we are puzzled as to why SSA would not carefully follow the statutory notice requirements to expedite resolution of the matter." The court also noted that the juvenile court failed to observe the statutory timelines in that it scheduled the hearing for 45 days after Amber filed her objection form instead of within the required five days.

The court of appeal concluded that the agency had failed to meet its burden to prove that removal was in the child's best interests and was perhaps confused by its lack of understanding of which statutory preference was at issue. If the relative placement preference had been in effect, submitting the aunt's ICPC documentation would have been relevant to the court's determination. "However, SSA had a higher burden of proof post-termination because its removal plan conflicted with the statutory preference of maintaining a child's stability and permanency with her PAP. To assist the court in reviewing SSA's proposed removal plan, SSA needed to present evidence regarding [the child]'s current circumstances, which would include updated reports on the status of her relationships with the PAP, [the aunt], and any person relevant to her best interests."

The court also observed that the failure to comprehend the burden of proof was reflected in the county counsel's statement to the juvenile court that it was required to choose between two "appropriate" homes. "However, at this stage of the case, the conclusion both homes were appropriate did not allow the court to just choose one without further inquiry. To justify its removal decision,

SSA needed evidence proving [the aunt] was not only an appropriate relative placement but also a more suitable adoptive home than the one SSA previously designated the preferred adoptive home (with a PAP). The PAP preference, like the relative preference, is there for good reason."

The court pointed out that the agency presented no evidence concerning the child's current circumstances, that Amber presented a lot of evidence on that issue, and the agency offered nothing to counter that evidence. It emphasized the importance of considering the bond between the PAP and the child. Although the agency had in previous reports discussed the strong bond between Amber and the child and its approval of her as the prospective adoptive parent, it had no explanation in its Information Only report for the "abrupt change of course." The court said the only reason it could discern was "a reflexive type of decision, reminiscent of an outdated and simplistic 'there is a relative, there [the] child goes' approach." It was clear that the agency relied on the relative placement preference when asking the court to approve the removal. "The PAP preference was enacted to expedite adoptions with PAPs and limit children having to start over in homes they have never visited with caregivers they will not recognize."

APPELLATE/WRIT REVIEW

In re Christopher L., 12 Cal.5th 1 (Cal. Supreme Ct. (Liu, J.) 4/25/22)

Juvenile court failed to appoint counsel for presumed father based on erroneous assumption that he was only alleged. Father was bypassed under section 361.5(b)(10) and could also have been bypassed under (b)(12). Father was incarcerated and was not brought to court despite his request to attend the juris/dispo hearing. Counsel was not appointed until the .26 hearing. Father appealed the termination of his parental rights.

The court of appeal found the error harmless because the bypass was mandatory and there was no way having appointed counsel could have achieved a different result. It then held that failure to appoint counsel was not reversible *per se*. Father filed a petition for review.

The Supreme Court turned to *Weaver v. Massachusetts* (2017) 582 U.S. ___ [198 L.Ed.2d 420, 137 S. Ct.1899] (*Weaver*) to analyze whether these errors were structural. *Weaver* sets forth three rationales for finding structural error.

The first is that the right is not designed to protect the defendant from erroneous conviction, but instead protects some other interests. The right to counsel and the right to be present at the hearing are in the parent's interests.

The second rationale is that the effects of the error are simply too hard to measure. The court agreed with the appellate court's bypass analysis, concluding that the effects of the earlier errors were therefore irrelevant to the analysis in this case.

The third *Weaver* rationale is that the error "always results in fundamental unfairness." The absence of counsel in a dependency case does not invariably result in unfairness "in light of the statutory scheme governing reunification services. Nor does it follow that absence of counsel from one stage of the proceeding necessarily renders the entire proceeding fundamentally unfair, especially where, as here, counsel was provided after the jurisdiction and disposition hearing, and could have utilized a statutory mechanism to seek reconsideration of any prior order by the juvenile court." (The court

pointed out earlier in the opinion that trial counsel could have filed a 388 petition to set aside the disposition order and hold a new hearing based on the failure to appoint counsel at the beginning of the case but did not do so.)

In re J.R., 82 Cal.App.5th 569 (2nd Dist., Div. 1 (Los Angeles County) 8/23/22, mod. 8/25/22)

The agency failed to give an El Salvadoran mother, who was stranded in Guatemala by the pandemic, notice of any of the proceedings although it had contact information for her and she was interviewed when she contacted the agency by telephone. After finding that proper notice had been given at an earlier session of the .26 hearing, the court terminated both mother and father's parental rights. Father appealed the TPR order as well as an earlier order denying his 388 petition, arguing that reversal was required because mother was never served with proper notice of the dependency proceedings.

The agency raised a number of procedural defenses to father's appeal, including untimeliness of appeal to challenge finding that notice was properly given, standing, and the forfeiture, waiver, invited error, unclean hands, and disentitlement doctrines. The appellate court rejected all of these arguments.

The agency argued that the appeal was untimely because more than 60 days had passed from the time that the court made the notice finding and the filing of the Notice of Appeal. The appellate court pointed out that findings are not appealable and a litigant must wait to appeal until an order has been entered that substantially affects the interests of a party. The parent-child relationship was not affected until the court issued the TPR order and father filed a timely notice of appeal from that order.

The agency also argued that father did not have standing to raise mother's rights. Father argued that because a TPR order must terminate the rights of both parents, their interests are intertwined so as to give him standing because reinstatement of her rights must necessarily include reinstatement of his rights. The court held that allowing father to raise mother's constitutional claim falls within its "expansive authority to fashion appellate relief [including] the discretion to reinstate the rights of one parent based on an error in the termination of the rights of another parent."

"[I]f we did not employ our remedial authority to, in effect, grant father standing to raise DCFS's violation of mother's right to notice, then this constitutional error would most likely go uncorrected. Mother would not be able to file her own appeal . . . because the 60-day jurisdictional deadline for doing so has long since passed. [fn] Even assuming arguendo that this procedural barrier would not preclude mother from seeking relief via a habeas corpus petition, [fn] mother lacks a meaningful opportunity to pursue that remedy. When a DCFS social worker last spoke with mother, she was in either El Salvador or Guatemala, and there is no indication that the agency ever notified her of the nature of the proceedings or any of her rights relating thereto. . . . . Expecting mother to inform herself of her legal rights and to file a successful habeas corpus petition hereafter would be unreasonable and a hollow remedy for a violation of her due process rights."

In re D.P. 14 Cal.5th 266 (Sup. Ct (Liu, J.) 1/19/23/)

The juvenile court, relying on section 355.1, sustained a single 300(b)(1) failure-to-protect allegation against the parents in case where the child had a single rib fracture that parents could not explain. The parents challenged that finding on appeal. While the appeal was pending, the juvenile court terminated jurisdiction, finding that parents had complied with case plan and that there was no longer any risk to the child. The court of appeal dismissed the case as moot. Father filed a petition for review, arguing that case was not moot because a possible CACI listing as a result of the sustained allegation could be stigmatizing and have negative consequences in the future.

After summarizing the appellate cases concerning whether dismissing a case as moot when the appellant challenges a jurisdiction finding, the court said "[a]lthough a jurisdictional finding that a parent engaged in abuse or neglect of a child is generally stigmatizing, complaining of 'stigma' alone is insufficient to sustain an appeal. The stigma must be paired with some effect on the plaintiff's legal status that is capable of being redressed by a favorable court decision. [Citations]. For example, a case is not moot where a jurisdictional finding affects parental custody rights (*In re J.K., supra,* 174 Cal.App.4th at pp. 1431-1432), curtails a parent's contact with his or her child (*In re A.R., supra*, 170 Cal.App.4th at p. 740), or "has resulted in [dispositional] orders which continue to adversely affect" a parent (*In re Joshua C., supra,* 24 Cal.App.4th at p. 1548)."

With respect to father's argument that the jurisdictional finding has or will result in a CACI listing, the court ruled that inclusion in the CACI did not necessarily amount to a "tangible legal or practical consequence of the jurisdictional finding that would be remedied by a favorable decision on appeal." After discussing the various negative consequences that could result from a CACI listing, the court concluded that father had failed to show that the allegation against him was even reportable to CACI. The agency argued that the sustained allegation came under the CANRA definition of "general neglect," which is not reportable to CACI, and the agency submitted a declaration asserting that it had not reported the sustained allegation to CACI.

Father also argued that he could be reported to the CACI in the future and would have no right to challenge the listing if it were made. The court concluded that father's CACI claim was "too speculative to demonstrate a specific legal consequence that a favorable judgment could redress."[3]

The court then went on to point out that courts of appeal have inherent discretion to reach the merits of a moot case and covered the cases addressing various circumstances under which it could do so. The court then ruled that the appellate court's conclusion that discretionary review was not appropriate in this case was error because its analysis relied on the definition of what makes a case moot instead of on whether the court had discretion to decide it anyway.

The court observed that dependency appeals by their nature are prone to mootness problems because the case proceeds in juvenile court while the ap-

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[3] The court disapproved *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716 to the extent that it held that speculative future harm is enough to avoid mootness.

peal is pending. In deciding whether to exercise discretion to decide a moot case on the merits, appellate courts should look at whether the challenged jurisdictional finding "could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings," or "`could have other consequences for [the appellant], beyond jurisdiction.'" Examples of potential prejudice would include cases where the agency could rely on the jurisdictional finding in a future proceeding, cases where the finding could impact the child's placement, or future family law proceedings.

The court may consider the nature of the jurisdictional finding being challenged. If it is based on "particularly stigmatizing or pernicious conduct," the greater the parent's interest in challenging such findings. Appellate courts should also consider why the case became moot, e.g., where the juvenile court has jurisdiction because one parent did not appeal, but the other parent wants to challenge allegations of more serious conduct or the parent does not challenge all of the findings but only the more serious ones.

In cases like this one, the appeal became moot because the parents complied with their case plan. If they had not, the case would have continued and father's appeal would not have been moot. "It would perversely incentivize noncompliance if mootness doctrine resulted in the availability of appeals from jurisdictional findings only for parents who are less compliant or for whom the court has issued additional orders. ([Citations].) Principles of fairness may thus favor discretionary review of cases rendered moot by the prompt compliance or otherwise laudable behavior of the parent challenging the jurisdictional finding on appeal."

"Given the short timeframes associated with dependency cases and the potentially significant, if sometimes uncertain, consequences that may flow from jurisdictional findings, consideration of the overarching purposes of the dependency system may counsel in favor of reviewing a parent's appeal despite its mootness. A reviewing court must decide on a case-by-case basis whether it is appropriate to exercise discretionary review to reach the merits of a moot appeal, keeping in mind the broad principles and nonexhaustive factors discussed above."

ICWA INQUIRY ERROR

Pending in the Supreme Court

In re Dezi C., 79 Cal.App.5th 769 (S275578 review granted 9/21/22). What constitutes reversible error when a child welfare agency fails to make the statutorily required inquiry concerning a child's potential Indian ancestry?

Grant and holds pending decision in *Dezi C.*:

In re M.M., 81 Cal.App.5th 61 (S276009 review granted 10/12/22)

In re G.A., 81 Cal.App.5th 355 (S276056, review granted 10/12/22)

Harmless Error Standard Applies

In re S.S., 75 Cal.App.5th 575 (2nd Dist. Div. 1 (Los Angeles County) 2/24/22)

In re Darian R., 75 Cal.App.5th 502 (2nd Dist., Div. 1 (Los Angeles County) 2/24/22)

In re Allison B., 79 Cal.App.5th 214 (2nd Dist., Div.1 (Los Angeles County) 5/27/22)

In re J.W., 81 Cal.App.5th 384 (2nd Dist., Div.8 (Los Angeles County) 7/19/22)
In re Ezequiel G., 81 Cal.App.5th 984 (2nd Dist., Div.3 (Los Angeles County) 7/29/22)

Dissent by Justice Lavin.

In re Y.M., 82 Cal.App.5th 901 (4th Dist., Div. 1 (San Diego County) 9/2/22.)

Failure to make a proper ICWA inquiry is state law error not federal law error so reversal is appropriate only if the error is prejudicial under state law. The court reviewed the four existing case law theories on whether ICWA inquiry errors can be examined for harmless error and adopted the standard set forth in *In re Benjamin M.* (2021) 70 Cal.App.5th 735. [The error is not harmless where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child.]

*In re Adrian L.,*86 Cal.App.5th 342 (2nd Dist., Div. 1 (Los Angeles County) 12/14/22)

Adopted *Benjamin M*. standard for finding inquiry errors harmless.

A dissent by Justice Kelley argues that the agency was not required to make inquiries at all. The first sentence of section 224.2(b) requires inquiry when the child is "placed in the temporary custody" of the agency "pursuant to section 306." Section 306 authorizes the social worker to take temporary custody of a child when the child is in immediate danger. That is not what happened here.

When the case began, the child was not removed from mother's custody. When the child was subsequently removed, it was pursuant to a protective custody warrant under section 340—not pursuant to section 306. After an exhaustive discussion of the legislative history of section 224.2(d), the dissent concludes that the agency did not initially have a duty to inquire of extended family members and there was no statutory violation in the first instance because the child was not initially removed from mother under section 306.

Error Reversible If Appellant Shows Prejudice

In re H.V., 75 Cal.App.5th 433 (2nd Dist. Div. 5 (Los Angeles County) 2/18/22)

The agency conceded that it had not conducted an adequate ICWA inquiry but argued that the error was harmless because mother failed to assert on appeal that she had Native American heritage and therefore failed to show that there was a reasonable probability that she would have had a more favorable outcome but for the error.

The appellate court rejected this argument: "Mother does not have an affirmative duty to make a factual assertion on appeal that she cannot support with citations to the record. (See *Liberty National Enterprises, L.P. v. Chicago Title Ins. Co*. (2011) 194 Cal.App.4th 839,846.) Instead, on this record, which demonstrates that the Department failed to discharge its first-step inquiry duty, we conclude that mother's claim of ICWA error was prejudicial and reversible [fn]. (See *In re N.G* .(2018) 27 Cal.App.5th 474, 484.)"

In re A.C., 75 Cal.App.5th 1009 (2nd Dist., Dist., Div. 1 (Los Angeles County) 3/4/22)

Dissent thinks showing of possibility of Indian ancestry required before remand for further inquiry is justified.

In re Ricky R., 82 Cal.App.5th 671 (4th Dist., Div. 2 (Riverside County) 8/25/22.)

"When DPSS fails to comply with the duty of initial inquiry under state law, we will find the error to be prejudicial and conditionally reverse if 'the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child.' (*Benjamin M., supra*, 70 Cal.App.5th at p. 744.) That standard does not require 'proof of an actual outcome (that the parent may actually have Indian heritage).' (*Id.*at pp. 743-744.) The missing information need only be relevant to the ICWA inquiry, 'whatever the outcome will be.' (*Id.* at p. 744; see also *In re Antonio R*. (2022) 76 Cal.App.5th 421, 435 ['in determining whether the failure to make an adequate initial inquiry is prejudicial, we ask whether the information in the hands of the extended family members is likely to be meaningful in determining whether the child is an Indian child, not whether the information is likely to show the child is in fact an Indian child'].)"

In re K.H., 84 Cal.App.5th 993 (Fifth Dist. (Kern County) 10/21/22)

Where there is insufficient documentation of the agency's inquiries and of the results of those inquiries in the record, "the error is prejudicial because neither the agency nor the court gathered information sufficient to ensure a reliable finding that ICWA does not apply and remanding for an adequate inquiry in the first instance is the only meaningful way to safeguard the rights at issue."

See also*: In re J.K.,* 83 Cal.App.5th 498 (2nd Dist., Div. 6 (Santa Barbara County) 9/16/22.)

In re Oscar H., 84 Cal.App.5th 933 (2nd Dist., Div. 8 (Los Angeles County) 10/27/22)

In re E.C., 85 Cal.App.5th 123 (5th Dist. (Kern County) 11/8/22

Prejudice Assumed--Reversal Required

In re J.C., 77 Cal.App.5th 70 (2nd Dist., Div. 7 (Los Angeles County) 4/4/22)

"To state the Department's argument is to expose its circular flaw: By failing to conduct an adequate inquiry, the Department virtually guarantees that the (incomplete) information it obtains will support a finding ICWA does not apply and that the juvenile court's error in failing to require the Department to comply with the law is harmless. Under the Department's theory, the less it complies with its duties to inquire under state and federal law, the more harmless is its erroneous failure to inquire. [¶] That's not how it works."

In re A.R., 77 Cal.App.5th 197 (4th Dist., Div.3 (Orange County) 3/29/22, pub. 4/7/22)

"[A] rule requiring reversal in all cases where ICWA requirements have been ignored is consistent with the recognition that parents are effectively acting as 'surrogate[s]' for the interests of Native American tribes when raising this issue on appeal. . . . '[a]ppellate review of procedures and rulings that are preserved for review irrespective of any action or inaction on the part of the parent should not be derailed simply because the parent is unable to produce an adequate record.' ([Citation].)

Any other rule would potentially make enforcement of the tribes' rights dependent on the quality of the parents' effort on appeal. That would be inconsistent with the statutory schemes which place that responsibility squarely on the

courts and child welfare agencies. Stated plainly, it is the obligation of the government, not the parents in individual cases, to ensure the tribes' interests are considered and protected. The duty to inquire in every case is the key to that protection. Without it, the tribes effectively have no mechanism for ascertaining whether they have an interest in the care and well-being of any specific child. To ignore the obligation to conduct an ICWA inquiry in individual cases would undermine ICWA policy in general."

In re E.V., 80 Cal.App.5th 691(4th Dist., Div.3 (Orange County) 6/30/22)

In re G.H., 84 Cal.App.5th 15 (4th Dist., Div. 3 (Orange County) 10/6/22)
A complete failure to conduct any inquiry requires reversal because the failure to conduct the inquiry is a "miscarriage of justice" under the California constitution.

Proper Appellate Remedy
In re J.K., 83 Cal.App.5th 498 (2nd Dist., Div. 6 (Santa Barbara County) 9/16/22.)

Where agency has failed to meet duty of inquiry, proper disposition of appeal is to issue a conditional *affirmance* with a limited remand.

In re.A,C., 86 Cal.App.5th 130 (2nd Dist., Div. 5 (Los Angeles County) 12/12/22)

Mother appealed the order terminating her parental rights arguing that the agency had failed to comply with ICWA inquiry requirements. The parties filed a joint application and stipulation asking the court to order a conditional affirmance and remand the case to the juvenile court with instructions that it order the agency to inquire of extended family members.

The court found that the proposed stipulation met the requirements of CCP128(a)(8) but issued a conditional reversal instead of a conditional affirmance. In this court's view, a failure to comply with the ICWA inquiry requirements requires reversal.

Reversal Not Required Where Appeal Is From Disposition
In re S.H., 82 Cal.App.5th 166 (1st Dist., Div. 1 (City and County of San Francisco) 8/12/22)

No need to reverse an appeal from disposition order where agency acknowledges that it failed to conduct a proper inquiry because the inquiry obligation is ongoing.

In re Dominick D., 82 Cal.App.5th 560 (4th Dist., Div. 2 (San Bernardino County) 8/23/22.) ICWA inquiry and notice errors do not warrant reversal of the juvenile court's jurisdictional or dispositional findings and orders other than the ICWA finding itself.

In re Baby Girl M., 83 Cal.App.5th 635 (2nd Dist., Div. 5 (Los Angeles County) 9/21/22.)

Judicial Notice/CCP §909—Inquiry Results After NOA is Filed

Pending in the Supreme Court

In re Kenneth D., 82 Cal.App.5th 1027 (S276649, review granted 11/30/22)

May an appellate court take additional evidence to remedy the failure of the child welfare agency and the trial court to comply with the inquiry, investigation, and notice requirements of the

Indian Child Welfare Act? If so, what procedures must be followed?

Grant and hold pending decision in *In re Kenneth D.*:

In re E.L. 82 Cal.App.5th 597 (276508, review granted 11/30/22.)

In re M.B., 80 Cal.App.5th 617 (2nd Dist., Div.7 (Los Angeles County) 6/13/22, mod. 6/29/22)

After mother appealed from the termination of her parental rights, arguing failure to conduct a proper ICWA inquiry, the agency filed a report with the juvenile court regarding further inquiry efforts and requested that appellate court take judicial notice of report to show that appeal was moot.

The court of appeal denied the motion because, even though it agreed that courts of appeal may take judicial notice of post-judgment documents, " 'they may not take judicial notice of the truth of hearsay statements in decisions and court files.' (*In re Vicks* (2013) 56 Cal.4th 274, 314 ….)" The contents of the "report—the substance of the post-judgment interviews conducted by the Department and its description of unsuccessful efforts to reach other maternal family members—are not properly before us in this appeal."

A CCP §909 motion permits an appellate court to take additional evidence and make additional findings of fact. However, the court declined to treat the request for judicial notice as a 909 motion because the post-judgment interviews detailed in the report did not moot mother's appeal. Section 366.26(i)(1) says that the juvenile lacks jurisdiction to modify or revoke a TPR order once it is final as to that court. The county may not remedy a defective ICWA investigation by conducting further interviews while the termination order is being reviewed on appeal.

"Rather than attempt to moot [mother's] appeal by belatedly conducting the investigation required by section 224.2, the Department's proper course of action was to stipulate to a conditional reversal with directions for full compliance with the inquiry and notice provisions of ICWA and related California law—a procedure the Department has used in many ICWA appeals pending before us."

In re Ricky R., 82 Cal.App.5th 671 (4th Dist., Div. 2 (Riverside County) 8/25/22.)

The agency tried to avoid the inquiry error issue by filing a motion to dismiss the appeal as moot on the basis of postjudgment evidence in the form of declarations from two social workers purporting to show that they had contacted or attempted to contact the extended family members and setting forth the results of those inquiries. The court declined the agency's request for judicial notice of the declarations because there is no evidence that they were filed with the juvenile court or were otherwise records of the juvenile court. Even if they were court records, the court of appeal could only take judicial notice of the existence of the declarations, not the truth of the matters asserted therein.

The court also refused the agency's request to augment the record with the declarations. While the court may augment to include documents lodged or filed with the juvenile court, a reporter's transcript, or a settled statement of oral proceedings, there is no evidence that the declarations were filed or lodged with the juvenile court.

Finally, the court refused to consider the declarations under CCP section 909.

While that statute permits the court to take additional evidence and make independent findings of fact, the court concluded that it is the juvenile court, not the court of appeal, who should consider in the first instance whether the agency discharged its ICWA inquiry duties.

"In her opposition to the motion to dismiss, Mother reserves the right to cross-examine the social worker declarants, present witnesses of her own, and otherwise question the accuracy of the statements in the declarations. The juvenile court should determine whether there is reason to believe or know that the children are Indian children, after Mother has had the opportunity to challenge DPSS's evidence. Further, the juvenile court should determine whether DPSS has contacted all readily available extended family members and otherwise fully discharged its ICWA duties, in light of any new evidence."

Legislation
&
Rules of Court

§300

. . . .

(b)(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of any of the following:

(A) The failure or inability of the child's parent or guardian to adequately supervise or protect the child.

(B) The willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.

(C) The willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment.

(D) The inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

(2) A child shall not be found to be a person described by this subdivision solely due to any of the following:

(A) Homelessness or the lack of an emergency shelter for the family.

(B) The failure of the child's parent or alleged parent to seek court orders for custody of the child.

(C) Indigence or other conditions of financial difficulty, including, but not limited to, poverty, the inability to provide or obtain clothing, home or property repair, or childcare.

….

(b) It is the intent of the Legislature that families should not be subject to the jurisdiction of the juvenile court nor should children be separated from their parents based on conditions of financial difficulty, including, but not limited to, a lack of food, clothing, shelter or childcare. Reasonable services to prevent juvenile court intervention or children being separated from their parents include services to alleviate a potential risk to a child based on conditions of financial difficulty, including, but not limited to, referrals to community-based organizations. Consistent with existing law, no family should be subject to the jurisdiction of the juvenile court nor should children be separated from their parents based on conditions of financial difficulty unless there is willful or negligent action or failure to act and a nexus to harm such that the child has suffered or there is a substantial risk the child will suffer serious physical harm or illness.

(Ch. 832, SB 1085, §2)

§300.2.

(a) Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment. In addition, the provisions of this chapter ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the child.

(b) It is the intent of the Legislature that families should not be subject to the jurisdiction of the juvenile court nor should children be separated from their parents based on conditions of financial difficulty, including, but not limited to, a lack of food, clothing, shelter or childcare. Reasonable services to prevent juvenile court intervention or children being separated from their parents include services to alleviate a potential risk to a child based on conditions of financial difficulty, including, but not limited to, referrals to community-based organizations. Consistent with existing law, no family should be subject

to the jurisdiction of the juvenile court nor should children be separated from their parents based on conditions of financial difficulty unless there is willful or negligent action or failure to act and a nexus to harm such that the child has suffered or there is a substantial risk the child will suffer serious physical harm or illness.
(Ch. 832, SB 1085, §2)

§309

. . . .

(e)(3)*(A)* The social worker shall use due diligence in investigating the names and locations of the ~~relatives~~ *relatives, as well as any parent and alleged parent,* pursuant to paragraph (1), including, but not limited to, asking the child in an age-appropriate manner about *any parent, alleged parent, and* relatives important to the child, consistent with the child's best interest, and obtaining information regarding the location of the child's *parents, alleged parents, and* adult relatives. Each county welfare department shall ~~create and make public a procedure by which relatives of a child who has been removed from their parents or guardians may identify themselves to the county welfare department and be provided with the notices required by paragraphs (1) and (2).~~ *do both of the following:*

(i) Create and make public a procedure by which a parent and relatives of a child who has been removed from their parents or guardians may identify themselves to the county welfare department and the county welfare department shall provide parents and relatives with the notices required by paragraphs (1) and (2).

. . .

(B) The due diligence required under subparagraph (A) shall include family finding. For purposes of this section, "family finding" means conducting an investigation, including, but not

limited to, through a computer-based search engine, to identify relatives and kin and to connect a child or youth, who may be disconnected from their parents, with those relatives and kin in an effort to provide family support and possible placement. If it is known or there is reason to know that the child is an Indian child, as defined by Section 224.1, "family finding" also includes contacting the Indian child's tribe to identify relatives and kin.
(Ch. 811, SB 384, §1)

328.2. *(Added)*
The State Department of Social Services shall update all regulations, all-county letters, and other instructions relating to the investigation of a minor who may be described by Section 300 to ensure that, when a social worker is investigating an alleged case of child abuse or neglect, a parent's or guardian's use or possession of cannabis is treated in the same manner as a parent's or guardian's use or possession of alcohol and legally prescribed medication.
(Ch 260, AB 2595, §1)

§361.5

. . . .

(e)*(4) Parents and guardians in custody prior to conviction shall not be denied reunification services pursuant to paragraph (1). In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated, institutionalized, detained, or deported parent's or guardian's access to those court-mandated services and ability to maintain contact with the child, and shall document this information in the child's case plan. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Nothing in this paragraph precludes denial of reunification services pursuant to subdivision (b).*
(Ch, 69 AB 2159, §1)

§366.21

. . . .

(e)(8) If the child is not returned to ~~his or her~~ *their* parent or legal guardian, the court shall determine *by clear and convincing evidence* whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

. . . .

(f)(1)(A) At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding ~~his or her~~ *their* child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. The court shall also determine *by clear and convincing evidence* whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian.

. . . .

(Ch 165, AB 2866, §1)

§366.22.

(a)(3) . . . . The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine *by clear and convincing evidence* whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

. . . .

(Ch 165, AB 2866, §2)

Pen.Code §11165.2(b)

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has ~~occurred.~~ *occurred but the child is at substantial risk of suffering serious physical harm or illness. "General neglect" does not include a parent's economic disadvantage.*

. . . .

(Ch. 770, AB 2085, §1)

Rule 5.630. Restraining orders

(a) Court's authority (§§ 213.5, 304)

(1) After a petition has been filed under section 300, 601, or 602, and until the petition is dismissed or dependency or wardship is terminated, or the ward is no longer on probation, the court may issue restraining orders as provided in section 213.5. The juvenile court has exclusive jurisdiction under section 213.5 to issue a restraining order to protect the child who is the subject of a petition under section 300, or any other child in the household.