Supreme Court No: S255839

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re CADEN C., A Persons Coming Under the Juvenile Court Law.	)	Court of Appeal Nos. A153925, A154042
SAN FRANCISCO HUMAN SERVICES AGENCY, Plaintiff and Appellant,	)	San Francisco County No. JD15-3034
v.	)	
CHRISTINE C. et al, Defendants and Respondents;	)	
CADEN C., a Minor, Appellant.	)	

APPEAL FROM AN ORDER OF THE SUPERIOR COURT
STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

HONORABLE MONICA WILEY, JUDGE PRESIDING

REPLY TO ANSWERS TO PETITION FOR REVIEW

NICOLE WILLIAMS (SBN 203006)
Attorney at Law
4790 Irvine Blvd., Suite 105, #263
Irvine, CA 92620
(949) 230-9775
Williams203006@gmail.com

Attorney for Respondent, CHRISTINE C.
By appointment of the Court of Appeal
under the First District Appellate Project,
Independent Case System

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re CADEN C., A Person Coming Under the Juvenile Court Law.	)	Court of Appeal Nos. A153925, A154042
SAN FRANCISCO HUMAN SERVICES AGENCY, Plaintiff and Appellant,	)	San Francisco County No. JD15-3034
v.	)	
CHRISTINE C. et al., Defendants and Respondents;	)	
CADEN C., a Minor, Appellant.	)	

APPEAL FROM AN ORDER OF THE SUPERIOR COURT
STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

HONORABLE MONICA WILEY, JUDGE PRESIDING

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

CHRISTINE C. (Mother or Petitioner) respectfully replies to both Answers filed by Appellants, the San Francisco Human Services Agency (Agency) and CADEN C. (Caden) in response to the Petition for Review of the published decision of the Court of Appeal, First Appellate District, Division One (per Sanchez, J.), filed on April 9, 2019. (*In re Caden C.* (2019) 34 Cal.App.5th 87.)

PREFATORY STATEMENT

In the interest of brevity, Mother submits this single Reply to the two Answers filed in this case. Without repeating the arguments contained in her Petition for Review, Mother will briefly address issues raised by the Answers.

ARGUMENT

I.

REVIEW BY THIS COURT IS NECESSARY

The minor, Caden, contends that Mother and Father have failed to show that review is necessary. (Minor's Answer pp. 4-5.) Mother acknowledges that she did not, and still does not, contend that review is necessary to secure uniformity of decision. (Petition pp. 6-7; Minor's Answer p. 5.) However, review by this Court is not limited to those cases where there is a lack of uniformity of decision. (Cal. Rules of Court, rule 8.500(b)(1).) Review is also appropriate where an important question of law is presented. (Cal. Rules of Court, rule 8.500(b)(1).) Moreover, this case presents two important questions of law: 1) whether a parent's compliance with court-ordered reunification services and the degree to which the parent ameliorated the causes of the child's dependency should be a consideration in determining whether the Welfare and Institutions

Code[1] section 366.26, subdivisions (c)(1)(B)(i) beneficial parent-child relationship exception to adoption applies?; and 2) whether including a requirement that the parent comply with court-ordered reunification services and rehabilitate themselves in order to meet the beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i), is inconsistent with the purpose of the exception and also renders the exception meaningless because the exception only applies when the parents have failed to reunify with their dependent child? (Petition pp. 5, 6-7.) Considering that a parent's private interests in the custody and care of their child has been found to be implicit in the "liberty" protected by the Fourteenth Amendment's due process clause, it is hard to fathom a more important question of law than whether those rights can be interfered with where the Legislature has already dictated that those rights should not be trampled. (See *Santosky v. Kramer* (1982) 455 U.S. 745, 753; *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 38-39; *In re Marilyn H.* (1993) 5 Cal.4th 295, 306-307; *In re Sade C.* (1996) 13 Cal.4th 952, 987.) Thus, the Petition presents appropriate grounds for review and this Court should grant review.

[1] All statutory references are to the Welfare and Institutions Code.

II.

PETITIONERS HAVE NOT MISCHARACTERIZED THE HOLDING OF THE OPINION OR ITS IMPACT ON DEPENDENCY LAW.

The minor, Caden, further contends that both Mother and Father have "grossly mischaracterized the appellate opinion" and, as a result, review should be denied. (Minor's Answer pp. 5-6.) What Caden identifies as the holdings of the opinion are, in actuality, the "two overarching considerations" that guided the analysis of the Court of Appeal, not the Court of Appeal's holding. (Petition p. 10; Petition Appendix A pp. 24-25.) The actual holding of the opinion, which is the subject of the Petition for Review, is that "no reasonable court" could find that the beneficial parent-child relationship exception to adoption applied because Mother failed to comply with her reunification service plan and, therefore, to rehabilitate herself from the problem leading to Caden's dependency. (Petition Appendix A p. 28.)

The Agency also contends that Mother and Father have mischaracterized the opinion of the Court of Appeal because that opinion does not create a new requirement that the parent be in compliance with services and rehabilitated in order for the beneficial parent-child relationship exception to adoption to apply. (Agency's Answer pp. 6-8.)

The Agency is correct that the opinion did not state a new requirement. That said, the Petition makes it quite clear that the Court of Appeal followed *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1302, 1304, *In re Breanna S.* (2017) 8 Cal.App.5th 636, 648 and *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643-645 in reaching its decision, all of which imposed similar service plan compliance and rehabilitation requirements. (Petition p. 10-11.) Indeed, no where did the Petition state that the opinion of the Court of Appeal imposed a new requirement. (Petition pp. 8-14.) Instead, the Petition challenges a pattern of imposing these service plan compliance and rehabilitation requirements by the multiple Courts of Appeal and contends that this requirement is inappropriate and inconsistent with the purpose of the beneficial parent-child relationship exception to adoption. (Petition pp. 8-14.)

Hence, there is no mischaracterization of the opinion and this Court should grant review to determine whether or not the holding of the Court of Appeal, namely that the beneficial parent-child relationship exception to adoption cannot apply absent parental compliance with the reunification service plan and actual rehabilitation, is consistent with the Legislature's intent to preserve parents' and children's fundamental rights.

III.

A PARENT'S COMPLIANCE WITH COURT-ORDERED REUNIFICATION SERVICES AND THE DEGREE TO WHICH THE PARENT AMELIORATED THE CAUSES OF THE CHILD'S DEPENDENCY SHOULD NOT BE A CONSIDERATION IN DETERMINING WHETHER OR NOT THE BENEFICIAL PARENT-CHILD RELATIONSHIP EXCEPTION TO ADOPTION APPLIES BECAUSE INCLUDING SUCH A CONSIDERATION IS INCONSISTENT WITH THE PURPOSE OF THE EXCEPTION AND RENDERS THE EXCEPTION MEANINGLESS.

The Agency contends that Mother "has identified no decision holding that consideration of [the parent's compliance with her service plan and the extent of the parent's rehabilitation] is improper." (Agency Answer pp. 7.) This contention is absolutely wrong. In the petition, Mother cited specifically to *In re Amber M.* (2002) 103 Cal.App.4th 681, 690, for its holding that a parent's current inability to reunify can not justify the termination of parental rights. (Petition p. 11.) Certainly, the proposition that an inability to reunify cannot justify the termination of parental rights is the equivalent to the proposition that it is improper to rely on the parent's failure to comply with her service plan and rehabilitate herself to order parental rights terminated.

The Agency further contends that the "courts have long been in agreement that consideration of such factors is appropriate." (Agency

Answer p. 7.) This is a misstatement of the law. Admittedly, over the past 25 years since the decision in *In re Autumn H.* (1994) 27 Cal.App.4th 567 issued, the Courts of Appeal have occasionally commented on the parent's efforts at rehabilitation in cases addressing the beneficial parent-child relationship exception to adoption. However, the majority of those comments were either dicta, used to find the exception applied or actually show that consideration of a parent's efforts to rehabilitate is not appropriate. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642-644 [comment was dicta because there was no need to reach second prong or balancing test because parents did not regularly visit the child]; *In re Amber M*. (2002) 103 Cal.App.4th 681, 690 [finding that the fact that the mother was not ready for the children's return to her custody could not justify the termination of her parental rights]; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1538 [finding that the juvenile court's feeling that the mother could provide additional security for the children to be irrelevant]; *In re E.T.* (2018) 31 Cal.App.5th 68, 77 [noting that "[t]he standard is whether the children benefit from Mother's presence in their lives, not whether they could eventually be happy without her"].) It was not until mid-2016, when the Division One of the Fourth District Court of Appeal decided *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299-1304, that any court found that it

was appropriate to consider the parent's compliance with reunification services and rehabilitation in assessing the applicability of the beneficial parent-child relationship exception to adoption. Moreover, in those three years, only two courts have followed suit: Division Seven of the Second District in *In re Breanna S.* (2017) 8 Cal.App.5th 636, 647-648 [wherein there was no need to reach the issue because it found that the first prong of the exception had not been satisfied] and Division One of the First District in the case at issue here. Furthermore, that fact that a couple of Courts of Appeal are in agreement that consideration of the parent's case plan compliance and rehabilitation are appropriate considerations does not mean that those courts are correct. (See e.g. *In re R.T.* (2017) 3 Cal.5th 622, 626-637 [overruling *In re Precious D.* (2010) 189 Cal.App.4th 1251 and abrogating *In re Rocco M.* (1991) 1 Cal.App.4th 814].) Thus, this case presents a question of law that warrants review.

Finally, the Agency contends that ongoing consideration of these factors by the juvenile and appellate courts is appropriate. (Agency Answer pp. 7-8.) However, the agency offers no analysis to support its contention. (Agency Answer pp. 7-8.) Similarly, the Agency offers no analysis to counter Petitioners' analysis that it is an inappropriate consideration because it renders to the exception meaningless and is inconsistent with the

purpose of the exception. (Agency Answer pp. 7-8.) In fact, the Agency's contention illustrates exactly why review is necessary.

CONCLUSION

For the foregoing reasons as well as the reasons set forth in the Petition for Review, this Court should grant the petition for review.

Dated: June 3, 2019

Respectfully submitted,

Nicole Williams

NICOLE WILLIAMS
Attorney for Petitioner, Christine C.

CERTIFICATION OF COMPLIANCE
CALIFORNIA RULES OF COURT, RULE 8.500

Pursuant to California Rules of Court, rule 8.500, I certify that the Reply to Answers to the Petition for Review, filed on behalf of Christine C., is proportionally spaced, has a typeface of 13 points and contains 12 pages with a total of 2,361 words, excluding tables, as counted by the word count feature of Corel Word Perfect X8.

Dated: June 3, 2019

Respectfully submitted,

Nicole Williams

NICOLE WILLIAMS
Attorney for Petitioner, Christine C.

LESLIE A. BARRY, SBN 212303
19051 Golden West St. #106, PMB127
Huntington Beach, CA 92648

In re Caden C.
Court of Appeal Nos.
A153925, A154042

DECLARATION OF SERVICE

I, the undersigned, declare that I am over 18 years of age, residing or employed in the County of Orange, and not a party to the instant action. My business address is listed above and my e-service address is barry212303@gmail.com. On June 3, 2019, I served the attached **REPLY TO ANSWERS TO THE PETITION FOR REVIEW** by placing true copies in a sealed envelope, with the correct postage, and depositing them in the United States Postal Service, to each of the following persons at the following addresses:

Hon. Monica Wiley
San Francisco Juvenile Court
400 McAllister St.
San Francisco, CA 94102

Christine C.
address on record

On June 3, 2019, I also transmitted a PDF version of this document, via TrueFiling, to each of the following using the email address indicated:

First District Appellate Project
eservice@fdap.org

Gordon-Creed, Kelley Holl et al.
sugerman@gkhs.com
curtis@gkhs.com

Mark Wasacz, Esq.
markwasacz@icloud.com

Deborah Dentler, Esq.
ddentler@gmail.com

Michelle Danley, Esq.
michelle@danleylawpllc.com

Mariko Nakanishi, Esq.
mnakanishilaw@gmail.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 3, 2019, at Huntington Beach, California.

LESLIE A. BARRY

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE CADEN C.**
Case Number: **S255839**
Lower Court Case Number: **A153925**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **barry212303@gmail.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY TO ANSWER TO PETITION FOR REVIEW	S255839-PFR-R-ChristineC

Service Recipients:

Person Served	Email Address	Type	Date / Time
Deborah Dentler Attorney at Law 92957	ddentler@gmail.com	e-Service	6/3/2019 2:48:32 PM
Jeremy Sugerman Gordon-Creed, Kelley, Holl & Sugerman, LLP 146315	sugerman@gkhs.com	e-Service	6/3/2019 2:48:32 PM
Katie Curtis Gordon-Creed, Kelley, Holl & Sugerman, LLP 253016	curtis@gkhs.com	e-Service	6/3/2019 2:48:32 PM
Leslie Barry Leslie A Barry 212303	barry212303@gmail.com	e-Service	6/3/2019 2:48:32 PM
Michelle Danley Danley Law, PLLC 238318	michelle@danleylawpllc.com	e-Service	6/3/2019 2:48:32 PM
Michelle Danley Court Added 238318	michelledanley@gmail.com	e-Service	6/3/2019 2:48:32 PM
Nicole Williams Attorney at Law 203006	williams203006@gmail.com	e-Service	6/3/2019 2:48:32 PM
FDAP FDAP Additional Service Recipients	eservice@fdap.org	e-Service	6/3/2019 2:48:32 PM
Mariko Nakanishi Additional Service Recipients	mnakanishilaw@gmail.com	e-Service	6/3/2019 2:48:32 PM
Mark Wasacz Additional Service Recipients	markwasacz@icloud.com	e-Service	6/3/2019 2:48:32 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with

TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/3/2019

Date

/s/Leslie Barry

Signature

Barry, Leslie (212303)

Last Name, First Name (PNum)

Leslie A Barry

Law Firm