IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE R.T., A Person Coming Under the Juvenile Court Law,	Case No. S226416
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Petitioner/Respondent,	Court of Appeal Case No. B256411
v.	Juvenile Court Case No. DK03719 (Los Angeles County)
LISA E., Objector/Appellant.	

Appeal from the Juvenile Court of Los Angeles County

Honorable MARGUERITE D. DOWNING, Judge, Presiding

REPLY BRIEF OF PETITIONER LISA E. ON THE MERITS

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

Petitioner, Lisa E., hereby replies to the Answer Brief on the Merits filed on behalf of the Respondent, the Department of Children and Family

Services ("Respondent"). Petitioner does not intend to reargue her Brief on the Merits, but rather respond to the issues raised in Respondent's Answer Brief on the Merits ("Answer Brief").

Petitioner does not reply to or answer every comment or argument advanced by Respondent in the belief that the majority of points were covered adequately in Petitioner's Brief on the Merits. To any extent any issue raised in Petitioner's Brief on the Merits is not restated herein, it is not to be construed as an abandonment or waiver of that issue.

DISCUSSION

I.

THE LEGISLATURE'S INCLUSION OF THE LANGUAGE "AS A RESULT OF" IN THE FIRST CLAUSE OF SECTION 300, SUBDIVISION (b)(1)[1] DEMONSTRATES THE LEGISLATURE'S INTENTION OF A PARENTAL FAULT REQUIREMENT.

In its Answer Brief , citing to the case of *In re Cody W.* ((1994) 31 Cal.App.4th 221, 225), Respondent states "'prior to the enactment of the Family Law Act in 1969 [former Civil Code, section 4600 et seq.], the

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

decisions had held that an award denying custody to the parent in favor of a nonparent could stand only if the parent had been proven to be unfit. [W]ith the enactment of the Family Law Act, the standard of unfitness was dropped and the Legislature created the new rule that in order to award custody of a child to a nonparent the court was required to render a finding that an award to a parent would be "detrimental to the child"...') *In re B.G.* (1974) 11 Cal.3d 679, 694-695 [...].)'" (Answer Brief ("AB"), p. 35.) However, the language change made by the Legislature in exchanging the term "detriment" for the term "parental unfitness" is not indicative of the Legislature's intent to eliminate the element of parental fault under all subdivisions or causes of action of section 300, and specifically, the first clause under subdivision (b)(1), which is at issue here.

As the intermediate appellate court wrote:

> "[Appellant's] argument conflates parental 'unfitness' with parental culpability. But they are not the same. 'Unfitness' is concerned *whether* a parent is able to protect the welfare of her child; culpability is concerned with *why*. As noted above, unfitness can stem from a parent's willful acts, her negligence, or acts entirely

beyond her control and for which she is not culpable (such as suffering from a developmental disability)." (Slip Op., 8.)

In its Answer Brief, Respondent acknowledges that, notwithstanding the change in terminology mandated by the 1969 Family Law Act, parental fault is an element under several causes of action under section 300. (AB, pp. 22-23.)

There is no disagreement that parental unfitness may or may not include parental fault and several subdivisions of section 300 clearly require the social services agency to establish parental fault. The question remaining is whether this particular clause of subdivision (b)(1) requires a showing of parental fault.

The Legislature's retention of the language "as a result of" in the first clause of section 300, subdivision (b)(1) implies that "parental fault" must be found in that subdivision in order to assert jurisdiction over a child. That necessity of showing parental fault is also found in the first clause of section 300, subdivision (c) ["The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage...*as a result of* the conduct of the parent...."(Emphasis added.)]

Different language under other subdivisions of section 300 is used to convey the requirement that parental fault must be shown: subdivision (a) ["The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian."]; (d) ["The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian..."]; subdivision (e) ["The child is under the age of five years and has suffered severe physical abuse by a parent ..."]; subdivision (f) ["The child's parent or guardian caused the death of another child through abuse or neglect."]; subdivision (g) ["...[P]hysical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child."]; and subdivision (i) ["The child has been subjected to an act or acts of cruelty by the parent or guardian..."].

There are still other subdivisions under section 300, most notably the

first clause of subdivision (d), which do not include the term "result of" or any term of causation. There, the Legislature did not include an element of "parental fault", i.e., causation, in a situation where a child has been sexually abused by a member of the child's household. Because the nature of that abuse is so severe, the Legislature apparently deemed it necessary to include the child victim within the description of a dependent child of the juvenile court. even in a case where the parents are not to blame for the household members' sexual abuse of the child. Another instance where the Legislature did not require a showing of parental fault can be found in subdivision (c) of section 300 [Child is suffering, or is at substantial risk of suffering, serious emotional damage, and "has no parent or guardian capable of providing appropriate care."] – clearly, the consequences stemming from a child's "serious emotional damage" are severe, warranting juvenile dependency. There is no "causation" language in that section, and the parent could be "blameless". Another example is found in subdivision (g) of section 300, which warrants jurisdiction when a child "has been left without any provision of support". The Legislature did not include any causation element in that section of subdivision (g) as the risk of harm to

the child under those circumstances could be fatal, i.e., starvation.

A comparison of the causes of action under the various subdivisions under section 300 reveals that the type of harm or risk of harm under the first clause of subdivision (b)(1)—although serious—is not as serious as the harm or risk of harm described under other subdivisions of section 300. Perhaps, for that reason, the Legislature retained a causation element, i.e., parental fault, in the first clause of subdivision (b)(1) of section 300. Regardless of the Legislature's reasoning, the fact of the matter is that California has retained an element of parental fault under many causes of action under section 300, and especially under the first clause of subdivision (b)(1).

In its Answer Brief, Respondent argues "Section 300 requires the child, not the parent, to be described by one of the subdivisions." (AB, p. 36.) However, because the first clause of subdivision (b)(1) of section 300 requires the social services agency to prove the parent is the "cause" of the identified harm or risk of harm, necessarily it must establish the parent, as well as the child, is a person described by that section.

II.

R.T. WAS AT SUBSTANTIAL RISK OF SUFFERING SERIOUS PHYSICAL HARM, NOT AS A RESULT OF ANY ACT OR OMISSION BY PETITIONER, BUT AS A RESULT OF HER OWN INCORRIGIBILITY.

In its Answer Brief, Respondent claims "When the child's 'incorrigible' behavior places herself at risk of harm and the parent fails or is unable to protect the child's well-being, the harm or risk of harm to the child *is* a result of the parent's failure or inability to adequately supervise or protect the child, and the child comes within section 300, subdivision (b)(1)." (AB, p. 42.) The question here is whether R.T.'s mother was responsible for the potential harm flowing from R.T.'s incorrigibility or whether R.T. was responsible. At the time the petition was filed in this case, R.T. was 17½ years old. Certainly the Legislature recognized that once a child attains the majority age of 18, the child no longer comes under the parens patriae of the state. The juvenile court is no longer involved.[2]

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2 When a child reaches 18, the age of majority, the child can ask the court to terminate jurisdiction or, alternatively, agree to continued dependency jurisdiction as a nonminor dependent and receive conditioned services offered by the social services agency. If the "child" desires to continue dependency jurisdiction as a nonminor

The subject of the dependency case below was R.T., a 17½ year old about to be the mother of two children. There is no dispute that R.T. was incorrigible, no dispute that R.T. refused to obey her mother, and no dispute that R.T. was truant. (Petitioner's Brief on the Merits, pp. 11-12.). The evidence here simply did not show that the serious risk of harm R.T. faced was caused by anyone's actions but her own.

III

THE KEY TO THE RESOLUTION OF THE ISSUE RAISED BY THIS COURT IS THE LANGUAGE "AS A RESULT OF."

Under the first clause of subdivision (b)(1) of section 300, the social services agency was required to prove petitioner's actions or omissions caused R.T. to be at substantial risk of suffering serious physical harm. The undisputed evidence established (1) R.T. was at substantial risk of suffering that harm; (2) not as a result of any act or omission by petitioner; and (3) as

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dependent, the initial case that brought the child into the dependency system is terminated and a new case is opened for the "child" as a nonminor dependent. Jurisdiction under the new case automatically terminates when the "child"reaches the age of 21. The decision to open a case as a nonminor dependent is discretionary, not mandatory. (Sections 303, 391.)

a result of R.T.'s own actions or omissions. The remainder of the issues raised are "side" issues: (a) whether, under these circumstances, the case belongs under the delinquency or dependency arm of the juvenile courts; (b) whether mother "agreed" or whether there was merely a "consensus" that a dependency petition be filed, which is immaterial under the statute; [3] (c) whether the Family Law Act applies or does not apply to the dependency scheme; and, according to Respondent, (d) whether the Legislative history applies, be that as it may. Ultimately, this Court is examining only these words — "as a result of"— in the first clause of subdivision (b)(1) of

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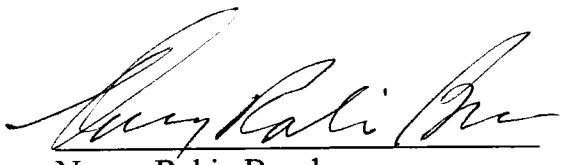
[3] Respondent states that, at a meeting held on February 19, 2014, "it was agreed that DCFS would detain R.T., evaluate her mental and developmental health, and offer reunification services to mother." (AB, p. 14.) What was actually stated in the Detention Report was that, at that meeting, the participants, which included the social worker, the supervising social worker, the supervisor of the supervising social worker and other DCFS employees, reached a "consensus" and developed a "safety plan" that included the filing of a petition to detain R.T. and which allowed Lisa to have monitored visits with R.T. (CT 13.) The word "consensus" is defined as : "the judgment arrived at by most of those concerned." (http://www.merriam-webster.com/dictionary/consensus). Lisa had previously been advised that there was a probability that a petition would be filed to remove R.T. from her custody, stating "caretaker incapacity" as to her. Lisa did not agree to the filing of the petition. (CT 13.)

section 300. There is no doubt that R.T., a 17½ year old mother of one and about to be a mother of two, was at substantial risk of serious harm. However, that risk of harm was the *result of* her own actions, not her mother's. There was insufficient evidence that R.T. was a person described by the first clause of subdivision (b)(1) of section 300, and the findings otherwise by the juvenile court require reversal.

Dated: September 22, 2015

Respectfully submitted,



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WORD COUNT CERTIFICATE

In compliance with California Rules of Court, Rule 8.520(c)(1), I certify this brief contains 2,103 words, excluding tables, calculated by the word processing program used to generate this brief.

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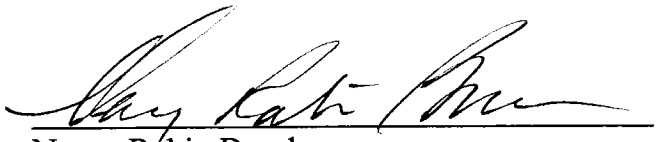

Nancy Rábin Brucker

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 11661 San Vicente Boulevard, Suite 500, Los Angeles, CA 90049.

On September 23, 2015, I served the foregoing REPLY BRIEF OF PETITIONER LISA E. ON THE MERITS on the parties in this action by placing a true and correct copy thereof in a sealed envelope to the following addresses:

SEE SERVICE LIST ATTACHED

[X] BY MAIL **I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.**

[ ] HAND DELIVERY

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 23, 2015, at Los Angeles, California.

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