

# JUVENILE LAW UPDATE

BEYOND THE BENCH  
December 16, 2011  
Commissioner Anthony Trendacosta  
Commissioner Jacqueline Lewis

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# PARENTAGE

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In re M.C. (5/6/11) 195 Cal. App. 4th 197

- Can a child have three presumed parents?
- No, only 2.

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In re Levi H. (7/8/11) 197 Cal. App. 4th 1279

- Did a voluntary declaration of paternity by the biological father rebut the presumed father's status of the mother's husband?
- Presumed fatherhood based on a voluntary declaration of paternity extinguishes the 7611 presumption.

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In re J.H. ( 8/18/11) 198 Cal. App. 4th 635

- Did the court err by not making a legal finding of biological paternity even when there was another presumed father?
- Yes. Under rule 5.635(e) the juvenile court must make a parentage determination. It may do so either by ordering genetic testing or based on the "testimony, declarations, or statements of the alleged parents".

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In re P.A. (8/29/11) 198 Cal. App. 4th 974

- Does the biological father rebut the presumption of paternity under FC 7611(d)?

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- The appellate court held that biology does not determine the presumed parent. 7612(c) provides that a paternity presumption under 7611 is rebutted by a *judgment* establishing paternity of the child by another man. It is critical to distinguish a *judgment* from a *finding re a biological test*. Where child has both a presumed and a biological father, court must hold an evidentiary hearing at which it reconciles the competing interests founded on the weightier considerations of policy and logic.

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In re Jose C. (9/2/10) 188 Cal. App. 4th 147

- Was grandfather a presumed father?
- Even though the grandfather may have acted as the functional equivalent of the child's father, he did not qualify for presumed father status under FC 7611(d) because he never held the child out as his own natural child.

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In re D.R. (3/7/11) 193 Cal. App. 4th 1494

- Who is designated under FC 7551 to witness a voluntary declaration made during the pendency of a dependency matter after a child is born and is released from the hospital?

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- FC 7551 designates who is authorized to witness a voluntary declaration and that it must be filed within 20 days with the state DCSS. An attorney representing one of the parents is not one of the persons or entities designated in the code.

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## JURISDICTIONAL ISSUES

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### SUBDIVISION DEFINED

- In re A.M. (8/11/10) 187 Cal.App. 4th 1380
- Does WIC 300(f) require the court to find current risk to the children in the petition?
- The appellate court held that based on the plain language of the statute, WIC 300(f) does not require a finding of current risk.

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In re D.C. (5/23/11) 195 Cal. App. 4th 1010

- Does WIC section 300 (i) require the petitioner to prove that a parent intended to harm the child?
- The Court found that 300 (i) makes no mention of a parent's state of mind. Instead, 300 (i) is only concerned with whether the act of cruelty occurred.

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In re Ethan C. (9/24/10) 188 Cal. App. 4th 992 (not citable)

- Did ct need to find neglect alleged =criminal negligence to sustain 300(f)?
- The appellate court indicated that nowhere is there an indication that the Legislature intended to require a finding of criminal negligence under WIC 300(f).
- CA Sup Ct. has accepted for review.

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WHAT IS THE RISK???

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## WIC 300 (g)

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### In re Anthony G. (3/30/11) 194 Cal. App. 4th 1060

- Did trial court appropriately sustain WIC (g) against the father when the child was otherwise provided for by mother and MGM?
- No. It was immaterial that the father did not contribute financially to the child's support because no evidence suggested that the father's contribution was necessary.

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### In re V.M. (12/22/10) 191 Cal. App. 4th 245

- Can juvenile ct take jurisdiction over a child because the father had abdicated his role of father the child's entire life?
- No. There was no evidence of parental abuse or neglect." In this case the facts that the father left the child with her MGP's for years after her mother passed away and that the child wished to remain living with her MGP's did not rise to the level of abuse or neglect for purposes of the dependency scheme.

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In re X.S. (11/17/10) 190 Cal. App. 4th 1154

- Should the trial court have sustained a WIC 300(b) or (g) allegation based on father's failure to provide?
- The appellate court held that such failure to provide did not rise to the level of sustaining a 300 (b) or (g) allegation because the child did not suffer serious, or for that matter *any*, physical harm as a result.

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In re Precious D. (11/18/10) 189 Cal. App. 4th 1251

- May juvenile ct assert jurisdiction over rebellious teen w/o proof of abuse, unfitness or failure to protect by parent?
- No. There was insufficient evidence to suggest that the mother was either negligent or unfit. While the mother had agreed to participate with services, it was the child that had refused to participate.

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In re Daisy H. (2/8/11) 192 Cal. App. 4th 713

- Did old domestic violence and father's mental/emotional health cause the child(ren) to fall within WIC 300(a) or (b)?
- No. Under WIC 300(b) there was no evidence that the physical violence between the parents was likely to continue, or that it directly harmed the child physically or placed the child at risk of physical harm. Court of Appeal noted that neither 300(a) nor (b) provide for jurisdiction based upon emotional harm.

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## On The Other Hand

- In re Ethan C. (9/24/10) 188 Cal. App. 4th 992
- The court noted that even though the parents were living apart at the time of the dispositional hearing, fewer than four months had passed since the last event and the mother was clearly still desirous of reuniting with the father. "Thus it is not unrealistic for the juvenile court to conclude that William's claims the parties were permanently separate was premature."

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## Is That Sexual Abuse?

WIC 300 (d)

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## In re B.T. (2/9/11) 193 Cal. App. 4th 685

- Did 38 yr old mother's affair with 14 year old boy resulting in birth of child present risk to her children?
- No. While the mother's sexual relationship with her son's fourteen year old friend reflected poorly on her judgment in one area, nothing suggested that it would cause her to neglect or abuse the daughter of that relationship especially since there was no evidence at all of any past abuse of her three other children or any other children.

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In re R.C. (6/14/11) 196 Cal. App. 4th 741

- Does “French kissing” a child fall within WIC 300(d)?
- Yes! The appellate court concluded that French kissing a child (12 years old) is inherently sexual.

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WIC 300 (c)

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In re A.J. (6/30/11) 197 Cal. App. 4th 1095

- Does 300(c) apply to a child if the child at *substantial risk of suffering serious emotional damage*?
- Appellate Court found that the child’s risk of suffering emotional damage was great based on the continued barrage of harassment by the mother and the child’s fear and nightmares directly related to mother.

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# WIC 300 (j)

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In re Ethan C. (9/24/10) 188 Cal. App. 4th 992

- Did court need to sustain corresponding 300(b) allegation when it sustained a (j) allegation as to the deceased child's siblings?
- Yes, the court found that it was error to dismiss allegations under WIC 300(b) as to the father's neglect of the toddler resulting in her death. Those allegations were a necessary predicate to sustain the allegations under WIC 300(j), as to the children at issue.

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# FORFEITURE

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In re N.M. (6/10/11) 197 Cal. App. 4th 159

- Can parent challenge the sufficiency of the allegations in a dependency petition or the dispositional orders on appeal if he did not first raise the issue below?

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- The appellate court held that a parent cannot challenge the sufficiency of the allegations in a petition on appeal if he did not first raise the issue below. The appellate court noted that “we see no reason to allow an individual to negotiate a settlement and then challenge the agreed upon language for the first time on appeal.”

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## EVIDENCE

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In re R.R. (8/30/10) 187 Cal. App. 4th 1264

- Primer on subpoenaing medical records and their admissibility.

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Karen P. v. Superior Court of Los Angeles (11/9/11)

- Did child or Agency put “at issues” child’s sexual history under Evidence Code section 996(a) or (b) when a dependency petition was filed?

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- The child did not put her sexual history “at issue” by disclosing the sexual abuse to the social worker, the police or submitting to a forensic medical exam because she did not file the dependency petition.
- The Agency did not become a “party claiming through or under the [child],” within the meaning of Evidence Code section 996(b) by filing a dependency petition alleging that the child was sexually abused by a parent. DCFS filed the dependency petition on behalf of the County of Los Angeles, not in a representative capacity of the child.
- Due Process Rights???

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# DISPOSITION ISSUES

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# COURT ORDERED SERVICES

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In re A.L. (8/11/10) 188 Cal. App. 4th 138

- Does a parent have a right to reunification services when the child remains in the custody of the custodial parent?
- No. The appellate court found that there was no current need to “reunify” the family because parental custody of the child was not disrupted by the dispositional order, and because she was not placed in foster care.

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In re Pedro Z. (11/16/10) 190 Cal. App. 4th

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- Did trial ct err in denying FR to father under WIC 361.5 when child was placed with mother?
- No. WIC 361.5 does not apply when a child is returned to a parent at disposition. Rather, the applicable statute is WIC 362(b).

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## PLACEMENT ISSUES

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## VOLUNTARY RELINQUISHMENT

- In re B.C. (1/27/11) 192 Cal. App. 4th 129
- The appellate court held that even when a parent makes a designated voluntary relinquishment, the court is still able to determine if placement is patently absurd or unquestionably not in the child's best interests

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In re N.V. (9/8/10) 189 Cal. App. 4th 25

- Did court err when it excluded evidence regarding Agency's refusal to place in the home of a relative based on previous child welfare referrals?
- Yes. "When the Agency deems a relative's home unsuitable due to a previous child welfare referral, "the juvenile court must exercise its independent judgment rather than merely review [the Agency's] placement decision for an abuse of discretion."

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Samantha T. v. Superior Court of San Diego ( 7/6/11) 197 Cal. App. 4th 94

- Is family friend of children's mother a (NREFM) within meaning of 362.7 and is placement with this person in the best interest of the children?

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- The proposed caretakers do not qualify as Non Related Extended Family Member (NREFM)s because, while they have a close and long standing relationship with the children's mother, they do not have a close relationship with the children themselves. Furthermore, according to the dependency statutory scheme, even when a potential caretaker qualifies as a NREFM, an order placing a child with that NREFM must be in the best interest of the child.

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# ICPC

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## In re C.B. (9/27/10) 188 Cal. App. 4th 1024

- Does ICPC apply to out of state placement with a parent?
- No. It doesn't matter whether that parent is "offending" or "non-offending".

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## In re Karla C. (7/21/10) 186 Cal. App. 4th 1236

- Did the trial court err in placing child with a parent out of the country without assuring the means to effectuate continuing jurisdiction and enforceability of orders out of country?

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- The appellate court held that before the trial court could place a child with the previously non-custodial parent in another country if it chose to maintain jurisdiction, it had to consider evidence regarding recognition and enforcement of the juvenile court's continuing jurisdiction under the other country's laws and the imposition of any measures necessary or appropriate to ensure enforceability of the juvenile court's continuing jurisdiction. The appellate court did not believe that either the UCCJEA nor the Hague Convention assured the court's ability to effect return of the child to the U.S nor enforceability of the orders made in the U.S.

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## DENIAL OF FAMILY REUNIFICATION SERVICES

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In re Allison J. (12/10/10) 190 Cal. App. 4th 1106

- Is WIC 361.5(b)(12) unconstitutional?
- The appellate court held that WIC 361.5(b)(12) [parent convicted of a violent felony] is not unconstitutional even though the code section does not require a nexus between the specified criminal conduct and the ability to parent. (Parent can still show it is in the child's best interest to offer FR).

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In re L.Z. (9/17/10) 188 Cal. App. 4th 1285

- When can you deny FR to parent under 361.5(b)(5) if they did not inflict the abuse?
- No. The statutes did not permit the trial court to deny a parent reunification services simply because it could not determine who inflicted the abuse, unless it was proven that the parent knew or should have known that he or she had an abused baby.

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## ICWA

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- NOT THE ISSUE IT ONCE WAS
- LESS THAN 10% OF THE PUBLISHED CASES IN THE LAST 18 MONTHS

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## NO ERROR SAYS APP COURT

- In re D.W. (2/23/11 ) 193 Cal. App. 4th 413
  - no error because the father had not affirmatively shown which of the three spellings of the PGM's name was correct.
- In re Z.W. (4/7/11) 194 Cal. App. 4th 54
  - Notice was valid because it was sent to the addresses on old Federal Register before new one was published.

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- In re Skylar H. (7/28/10) 186 Cal. App. 4th 1411
  - ICWA notice was not required unless the totality of the family's circumstances indicate there is a low but reasonable probability the child is an Indian child.
- In re Jonah D. (9/10/10) 189 Cal. App. 4th 118
  - the information provided (after an investigation) was too vague, attenuated and speculative to give the dependency court any reason to believe the children might be Indian children. (2<sup>nd</sup> Appellate District)

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- In re Hunter W. (8/30/11) 2<sup>nd</sup> Appellate Dist
- The trial court's finding that "family lore" is not reason to know that a child would fall under ICWA was appropriate.
- Mother did not know which tribe, whether the man in question was her biological father or any contact information for this man in order for the Agency to further investigate the claim. Mother stated she was not registered with any tribe.

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## MORE SUBSTANTIVE

- In re Jack C. III (2/15/11) 192 Cal. App. 4th 967
  - The court of appeal held that although the children were not enrolled members of the Band at the time of the proceedings, they were “Indian children” within the meaning of WIC 224.1(a) because the Band considered them to be so. It was the tribe’s prerogative to determine membership.

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## Transfer Petition

- The court also held that it was error to find that there was good cause to deny the transfer petition based on the fact that the petition was filed after reunification services were terminated or to deny on the basis of inconvenient forum because there was no evidence that the tribal court was unable to mitigate the hardship by making other arrangements to hear evidence.

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## DE FACTO STATUS

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In re B.F. (12/6/10) 190 Cal. App. 4th 811

- Did ct err in releasing mo's psychological evaluation to de facto parents?
- Yes, the appellate court noted that a de facto parent does not have a right to review all reports and documents filed with the court.
- Excellent discussion of limits of de facto parents participation in contested hearing.

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KIESHIA E. PRODIGY

(1993) 6 Cal. 4th 68

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In re Bryan D. (9/13/11) 199 Cal. App. 4th 127

- Did ct err in denying MGM defacto status?
- The appellate court held that MGM was not made ineligible for defacto parent due to the fact that there was a sustained petition against her. The court has to look at the nature of the allegations sustained.

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In re D.R. (6/15/10) 185 Cal. App. 4th 852

- Did de facto parent's physical abuse of the child forfeit his de facto status?
- Yes, the burden is different in granting de facto status than it is when you terminate de facto status. Like the case of Brittany K., the moving party would have to show a change of circumstances which warrants the termination and the court can take into account the psychological bond between the child and the de facto parent.

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## VISITATION

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In re Kyle E. (6/22/10) 185 Cal. App. 4th  
1130

- May court delegate to the Agency discretion to determine frequency of visitation, depending upon what the Dept finds is consistent with the well-being of the child?

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- The Court of Appeal found the order should have set a minimum number of visits or at least should have provided that Father could visit the minor “regularly.” On the other hand, it is not improper for the court to delegate the details of visitation, including the time, place, and manner.

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In re Brittany C. (1/20/11) 191 Cal. Rptr. 3d 1343

- Should emotional harm to the child be considered when making parental visitation orders?
- While visitation with the parents must be as frequent as possible consistent with the well-being of the child, it must provide for flexibility in response to the changing needs of the child and the family dynamics. A child’s refusal to visit and his/her wishes are factors to be considered. The court also noted that detriment includes harm to the child’s emotional well-being.

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- Contrary to In re C. C. (2009) 172 Cal. App. 4th 1481 and In re Hunter S. (2006) 142 Cal. App. 4th 988
- All Second Appellate Districts – different divisions

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In re T. H. (11/16/10) 190 Cal. App. 4th 1119

- Did ct. abuse its discretion in allowing an exit order giving supervised visits to the father as determined by the parents?
- The appellate court held that the court improperly delegated authority to the mother in this exit order because it effectively delegates to mother the power to determine whether visitation will occur at all.. The court indicated that the trial court must at least specify the amount of visits allowed by the non-custodial parent.

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In re A.C. (7/20/11) 197 Cal. App. 4th 796

- Did order for visitation to be arranged by the parents amount to an impermissible delegation of authority?
- The exit order made by the juvenile court under [Welf. & Inst. Code, §§ 364, subd. \(c\), 362.4](#), regarding the mother's supervised visitation did not constitute an impermissible delegation of authority to the father to determine whether visitation would occur.

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In re Grace C. (12/21/10) 190 Cal. App. 4th 1470

- Should ct have continued juris over LG to oversee visitation with parent?
- Because regular visitation had been happening, the court rejected mother's argument that jurisdiction should have been maintained to oversee visitation pursuant to WIC 366.3(a).

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- Did court improperly delegate authority regarding visitation to LG and therapist?
- The juvenile court's order did not impermissibly delegate discretion over visitation to the legal guardian or the minor's therapist but rather just properly considered the need for flexibility and allowed for adjustments if necessary after the termination of jurisdiction.

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- In re S.H. (8/5/11) 197 Cal. App. 4th 1542
- Did court err by limiting mother's visits with child without determining whether more frequent visits would be detrimental to the child (in PP)?
  - No, it is clear from the statutory scheme governing dependency that the Legislature did not intend the "frequent as possible" requirement to apply where, as here, a permanent placement has been ordered for the child.

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**MISCELLANEOUS**

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In re J.S. (6/22/11) 196 Cal. App. 4th 1069

- Did court's failure to make an explicit finding at dispo supporting its action of terminating jurisdiction with a FLO warrant reversal?
- Yes, but in this case it was **harmless error**.

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In re J.S. (10/14/11) 199 Cal. App. 4th 1291

- Can ct take jurisdiction over youth who had gotten legally married prior to the disposition of the case?
- Once the youth legally married (and she was, since her mother gave consent), the juvenile court is without authority to declare her a dependent.

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In re C.F. (7/27/11) 198 Cal. App. 4th 454

- Did Court properly deny mother's motion/writ petition to have her name removed from the Child Abuse Central Index (CACI)?

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- Under the Child Abuse and Neglect Reporting Act (1) the party must exhaust administrative remedies by completing the grievance process established by the State Department of Social Services and (2) if the grievance process does not provide the desired relief, the aggrieved party may file a petition for writ of mandamus pursuant to CCP Section 1094.5. In this case the petitioner did not exhaust her administrative remedies and the juvenile court did not have jurisdiction to hear the motion after the petition over the child had been dismissed.

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**In re J.F.** (5/11/11) 196 Cal. App. 4th 321

- Is parent of child in PPLA required to provide an offer of proof to set a contested post-permanency review hearing?
- No. The Parent has due process right to a contested post-permanency review hearing. Court may order further reunification services if the parent can prove by a preponderance of the evidence that reunification is the best alternative for the child.

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**UPDATE ON Greene v. Deschutes County** (5/26/11) 131 S. Ct. 2020

- US Supreme Court took Writ of Certiorari
- The US Supreme Court vacated the court of appeals opinion that the officials' actions violated the Fourth Amendment and remanded the matter based on the fact that the issue was now moot.

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- This however, left open the question of whether the US Supreme Court believed that the ninth circuit opinion that the actions of the social worker and law enforcement did violate the 4th Amendment right against illegal search and seizure was correct or incorrect.

- Since the ruling no longer stands, qualified immunity may still be available .

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In re Hunter W. (8/30/11)

- Did the court err in denying a two hour continuance of the on-going 388 hearing?
- Yes. The appellate court found that the 2 hour continuance request was not governed by WIC 352 because the request for this short continuance would not have conflicted with the "need to provide children with stable environments" or jeopardize the child's chances for a permanent placement .

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In re Nicole H. (11/30/11)

- Upon request of the child's counsel, must the trial court appoint an attorney and/or GAL to investigate and prosecute a civil tort action against the county?
- Yes.

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# NOTICE

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## In re V.V. (8/20/10) 188 Cal. App. 4<sup>th</sup>

- Was notice of WIC 388 petition to mother's designated mailing address under WIC 316.1, good notice?
- Yes. a permanent mailing address, designated for purposes of receiving notices, need not be the address at which a parent is actually residing and that it is the parent's duty to inform the juvenile court of any change in their mailing address.

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## In re A.D. ( 6/28/11) 196 Cal. App. 4<sup>th</sup> 1319

- Is failure to give notice in juvenile dependency case subject to harmless error or structural error analysis?
- Harmless error.

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# HAGUE CONVENTION

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## In re Vanessa Q. (7/14/10) 187 Cal. App. 4th 128

- Did court's failure to send notice to the central authority in Mexico fail to comply with the notice requirements of the Hague Convention?
- Yes. The court concluded that mail delivery of the petition and citation to appear to the prison in Mexico where the father was incarcerated, rather than service through the Mexican central authority, failed to comply with the service requirements of the Hague Service Convention.

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## In re M.M. (8/9/10) 187 Cal. App. 4th 302

- Does the Hague Convention apply to supplemental and subsequent petitions?
- No. Hague Service Convention does not apply to supplemental and subsequent juvenile dependency proceedings in light of the juvenile court's ongoing dependency jurisdiction and provided it has previously found proper notice to the parent.

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# TERMINATION OF REUNIFICATION SERVICES

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Earl L. v. Superior Court (9/20/11) 199  
Cal. App. 4th 1490

- Did court err when it terminated FR for the father at the 18 month review hearing and set the matter for a WIC 366.26 despite making a no reasonable efforts finding?

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- No. The court had previously made reasonable efforts findings at the 6 and 12 month review hearings and neither the father nor the mother made significant and consistent progress in establishing a safe home for the child's return.

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Kevin R. v. Superior Court of San

Diego ( 12/10/10) 191 Cal. App. 4th 676

- Issue - how juvenile courts orders intersect with conditions of parole.
- The social worker did not have the obligation to intercede in the father's parole modification proceedings. "The juvenile court may not order visitation that contravenes a lawful condition of parole imposed on a parent of a dependent child. Accordingly, a parent seeking a modification of a condition of parole must petition the Board of Prison Terms or bring a habeas petition in the appropriate court, if necessary."

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In re T.G. (8/31/10) 188 Cal. App. 4th 687

- Did the juvenile court err in finding that reasonable reunification services were provided to an incarcerated father at the 6-month review hearing?
- No. The father did not tell the social worker when he was later incarcerated, and by the time the social worker learned the father was incarcerated, it was too late to develop and prepare a new list of goals, service objectives, and referrals based on the father's changed circumstances.

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In re V.C. (8/18/10) 188 Cal. App. 4th 521

- Did ct err in terminating FR to father who was incarcerated 14 of the 18 months the case had been in the system?

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- No. Even though the father had been incarcerated for 14 of the 18 months the child had been in the system, the father inconsistently visited with the child before his incarceration and did not participate in any services. He did not send any cards to the child while incarcerated. He did not participate in all of the programs available to him while he was incarcerated and he did not consistently attend those programs in which he did participate in.

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## TERMINATION OF PARENTAL RIGHTS

WIC 366.26

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## EXCEPTIONS

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In re C.F. (3/16/11) 193 Cal. App. 4th 549

- The court held that In re S.B. (2008) 164 Cal. App. 4th 289 must be viewed in light of its particular facts. It does not stand for the proposition that a termination order is subject to reversal whenever there is 'some measure on benefit' in continued contact between parent and child. The court cautioned that frequent visits with the child alone are insufficient to meet this burden as interaction between the parent/child would always confer some benefit to the child.

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In re Bailey J. (11/9/10) 189 Cal. App. 4th 1308

- Should the trial court have granted the sibling party standing to participate in the WIC 366.26 hearing?
- While app. ct didn't make actual finding regarding failure, the court noted that the trial court made every effort to ensure that the sibling and her attorney had a full opportunity to present evidence and argument at the hearing to establish a basis for the sibling's position.

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In re C.B. (11/18/10) 190 Cal. App. 4th 102

- Can the trial court consider caretaker's promise to allow future visitation in determining whether the parent/child exception applies at 366.26?
- No. The trial court injected an improper factor into the weighing process by considering the prospective adoptive parent's willingness to allow continued contact between the mother and the children. Case remanded.

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In re K.H. (11/30/11)

- Is desire by a relative for LG rather than adoption which is not based on either financial or legal obligations sufficient to meet the exception under WIC 366.26(c)(1)(A)?
- Yes.

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**“NON-OFFENDING” PARENTS**

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In re Frank R. (1/13/11) 192 Cal. App. 4th 532

- Can ct terminate parental rights of non-offending parent?
- At the disposition hearing, a court must make a finding by clear and convincing evidence that return of a child to either parent would be detrimental to the health and welfare of the child, even in the situation where a parent is non-offending under the petition in order to later terminate that parent’s parental rights at a 366.26 hearing.

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In re Z.K. (10/25/11)

- Can a trial court terminate the parental rights of a parent absent clear and convincing evidence that custody of the child by that parent was detrimental to the child?

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- Reversed! Describing the facts as a “nightmare scenario” the Court of Appeal, citing to In re Gladys L. 141 Cal.App.4th 845 and similar cases, noted that a parent’s due process right to custody of his or her child cannot be infringed absent a finding of detriment. The C of A noted that the trial court never made a detriment finding as to mother. Thus, her parental rights cannot be terminated unless and until that has occurred.

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**ADOPTABILITY**

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In re Jose C. (9/2/10) 188 Cal. App. 4th 147

- The appellate court held that mere speculation about the child's reaction to the adoption was not evidence and could not be considered in determining his adoptability. The only evidence in this case fully supported the child's adoptability

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In re P.C. (9/8/11) 198 Cal. App. 4th 1533

- Where child has severe medical needs and no prospective adoptive home, can ct terminate parental rights finding that the child is generally adoptable and would be adopted within a reasonable time?

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- The appellate court held that despite the medical needs of the child, there was substantial and extensive evidence from the social worker and the medical professionals of the child's adoptability.
- The child is of a young age and the social worker as well as four other professionals attending to the child opined that she had considerable attributes that made her adoptable in spite of the medical issues.

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On the other hand...

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In re Scott B. (9/10/10) 188 Cal. App. 4th  
452

- Does the fact that a mother and her special needs son have a strong emotional bond outweigh the preference for adoption?
- The strong mother-child relationship, coupled with the child's emotional instability and his repeated preference to live with mother, presented a compelling reason for finding that termination of parental rights would be detrimental to the minor.

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WIC 388

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In re A.C. (7/15/10) 186 Cal. App. 4th 976

- Is 387 or 388 appropriate petition to move a freed minor to a more restrictive placement?
- 388

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In re Andrew L. (2/8/11) 192 Cal. App. 4th 683

- What is proper procedural vehicle to amend a previously sustained petition?
- 388
- Good discussion of requirements to amend according to proof in a juvenile petition.

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In re E.S. (6/28/11) 196 Cal. App. 4th 1329

- May a WIC 388 filed by a sibling motion be denied summarily if there is no threshold showing of a relationship between the sibling at issue and the petitioning sibling?
- Yes, a threshold showing for the petitioning sibling is that the child at issue has the requisite bond with the petitioning child.

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In re H.S. (9/2/10) 188 Cal. App. 4th 103

- What is “new evidence” for purpose of granting WIC 388 petition for hearing.
- The term “new evidence” in WIC 388 meant material evidence that, with due diligence, the party could not have presented at the dependency proceeding at which the order, sought to be modified or set aside, was entered.

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In re S.H. (8/5/11) 197 Cal. App. 4th 1542

- Did ct err by refusing to revisit issue of whether mo should receive FR services after the LG was terminated and dependency reinstated for purpose of establishing a new LG?
- Yes, 366.3 applies to any change in guardianship, whether there is a petition to terminate a guardianship or to modify a prior guardianship order by appointing a successor guardian.

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**LEGAL  
GUARDIANSHIPS**

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Guardianship of Christian G.

(5/13/11) 195 Cal. App. 4th 581

- Should probate court have referred this case to child protection agency for a dependency investigation?

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- The appellate court held that the probate court erred by not referring the case under **Probate Code 1513(c)** to a child protective services agency for a dependency investigation. Such a referral was required when allegations were made that would warrant dependency proceedings under WIC 300. After reviewing the significant differences between guardianship and dependency proceedings, the court concluded that the error was prejudicial because a referral would have made available the protections available in the dependency statutes, including reunification services and the apt of counsel for the father and the child.

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Guardianship of H.C.

(9/1/11) 198 Cal. App. 4th 160

- Did the trial court err in denying mother appointed counsel in guardianship proceeding?

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- The appellate court held that the mother did not have a constitutional right to appointed counsel because the appointment of a guardian pursuant to Probate Code 1514(a) was not analogous to a dependency proceeding with strong parental interest, weak governmental interest, and high risks of error. Rather probate guardianship was a private custody arrangement in which the state performed only a judicial role.

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## ATTORNEY ISSUES

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In re V.V. (8/20/10) 188 Cal. App. 4th 392

- Is the Marsden procedure the correct one when addressing discharging retained counsel?
- No.

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In re T.C. (12/21/10) 191 Cal. App. 4<sup>th</sup> 1387

- Was there an actual conflict for minor's counsel when the permanent plans for the sisters were different?
- No. In order for an actual conflict to be present, "there must be a showing that the siblings have different interests that would require their attorney to advocate a course of action for one child which has adverse consequences to the other... the fact that siblings have different permanent plans does not necessarily demonstrate an actual conflict of interest".

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- Should the court have granted a continuance to allow new retained counsel to prepare?
- The juvenile court would have allowed the father to proceed with substituted counsel if that counsel was ready to proceed. However, the court did not abuse its discretion in denying a continuance which would have substantially delayed the termination hearing to allow new counsel to prepare

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