

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION [NUMBER]

In re [CHILD'S INITIALS],) Court of Appeal
) No.: [CASE #]
A Person[s] Coming Under The)
Juvenile Court Law.)
) Superior Court
_____) No.: [CASE #]
[SPECIFIC COUNTY & AGENCY)
TITLE],)
)
Plaintiff and Respondent,)
v.)
)
[PARENT'S INITIALS] (mother/father),)
)
)
_____) Defendant and Appellant.

APPEAL FROM THE [NAME] COUNTY SUPERIOR COURT

Honorable [NAME], Presiding

APPELLANT'S OPENING BRIEF
PURSUANT TO *IN RE SADE C.* (1996) 13 CAL.4TH 952
AND *ANDERS V. CALIFORNIA* (1967) 386 U.S. 738

[ATTORNEY NAME, BAR #]

[ATTORNEY FIRM]

[FIRM ADDRESS]

[TELEPHONE]

Attorney for Appellant, [CLIENT NAME]

By appointment of the Court of Appeal under the
Appellate Defenders, Inc., [ASSISTED / INDEPENDENT] case system

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STATEMENT OF FACTS/PROCEDURAL HISTORY

[INSERT STATEMENT OF CASE AND FACTS]

STATEMENT OF APPEALABILITY

This appeal is from a judgment made at a [[SPECIFIC HEARING NAME](#)] hearing under section [<#>] of the Welfare and Institutions Code and is authorized by section 395.

ARGUMENT

I.

APPELLANT REQUESTS THIS COURT EXERCISE ITS DISCRETION TO INDEPENDENTLY REVIEW THE ENTIRE RECORD ON APPEAL.

Appellant's counsel raises no specific arguable issues in the present dependency case and respectfully requests this court exercise its discretion of a matter properly before it under Welfare and Institutions Code section 395 to review the entire record on appeal for arguable issues of error in the court below.

The California Supreme Court has held that the prophylactic requirement of an independent record review by the court, as established in *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] and *People v. Wende* (1979) 25 Cal.3d 436, does not apply to juvenile dependency cases. (*In re Sade C.* (1996) 13 Cal.4th 952.) Although this court is not required to review the record on appeal when counsel has filed an opening brief raising no specific issue, the state continues to have an important interest in an accurate and just resolution of a parent's appeal in dependency matters. Therefore appellant requests that this court exercise its discretion and independently review the entire record on appeal. (See *In re Sade C.*, *supra*, 13 Cal.4th at p. 989.)

II.

THIS COURT SHOULD CONSIDER THE FOLLOWING ISSUES AND ANY OTHERS ITS REVIEW OF THE RECORD DISCLOSES BEFORE DECIDING THE APPEAL

The following information about claims appearing in the record is provided pursuant to *Anders v. California, supra*, 386 U.S. 738, to assist the court in conducting its independent review of the record and provide a basis for an informed decision on this case.

A. Whether an Alleged Father Has Standing to Appeal the Sufficiency of an Indian Child Welfare Act Inquiry.

Does an alleged father have a right to bring an appeal based on the insufficiency of the juvenile court's and the department's inquiry into the application of the Indian Child Welfare Act (ICWA)? (*In re Daniel M.* (2003) 110 Cal.App.4th 703.)

B. Whether an Incarcerated Father Has a Right To Be Present at a Section 366.26 Hearing.

Under section 2625 of the Penal Code, when does an incarcerated parent have a right to be present at a Welfare and Institutions Code section 366.26 hearing? (Pen. Code, § 2625; *In re Barry W.* (1993) 21 Cal.App.4th 358.)

C. Whether Father Was Properly Served Notice of the Section 366.26 Hearing or Continued Section 366.26 Hearings.

Was father properly served notice of the section 366.26 hearing or the continued section 366.26 hearing? (Welf. & Inst. Code, § 294; *In re Phillip F.* (2000) 78 Cal.App.4th 250; *In re Jasmine G.* (2005) 127 Cal.App.4th 1109.)

III.

**APPELLANT REQUESTS THE OPPORTUNITY TO FILE
HIS OWN SUPPLEMENTAL BRIEF
AND REQUESTS THE COURT ORDER COUNSEL TO BRIEF
ANY ARGUABLE ISSUE IT DISCERNs.**

Appellant's counsel respectfully requests, in the interests of justice, that this court [CHOOSE APPLICABLE OPTION:] [accept the appellant's own supplemental brief, tendered with this brief] [OR] [provide appellant the opportunity to file his own supplemental brief within [NUMBER] days of the filing of this brief].¹ Although the court is not required to accept a brief in propria persona, it may exercise its discretion to do so. (*In re Phoenix H.* (2009) 47 Cal.4th 835.)

If this court, in reviewing this brief, the record, or any supplemental briefing finds good cause that an arguable issue exists, the court must order counsel to brief the issue. (See *Penson v. Ohio* (1988) 488 U.S. 75, 88 [withdrawal of counsel before court identified arguable issues "left petitioner completely without representation during the appellate court's actual decisional process"].) Although *Penson* was a criminal case and thus the right to counsel was based on the federal Constitution, rather than state statutory, judicial, and rule authority, as is involved in a dependency case, the basic principle remains applicable here: once a legal right to counsel on appeal is established, the court may not decide arguable issues on the merits without the benefit of advocacy by counsel.

¹Select appropriate option depending on which of the two options applies.

CONCLUSION

Based on the foregoing discussion, [FATHER] requests that this court in its discretion make an independent evaluation of the record, consider the issues to which this brief has called attention, [IF APPLICABLE] and any supplemental brief filed by appellant, and order this counsel to brief any arguable issue that is found.

Dated: _____

Respectfully submitted,

[ATTORNEY NAME]
Attorney for Appellant

CERTIFICATE OF WORD COUNT

I certify that the foregoing brief complies with California Rules of Court, rule 8.204(c) and contains [NUMBER] words, including footnotes, according to the word count feature of [NAME], the computer program used to prepare the brief.

[ATTORNEY NAME]

Attorney for Appellant

DECLARATION OF [ATTORNEY NAME]

I, [ATTORNEY NAME], declare as follows:

1. I am an attorney licensed to practice law before all the courts of the State of California. I was appointed to represent [CLIENT NAME] on appeal in Case No. [NUMBER].
2. I have thoroughly reviewed the record in this case and have discussed the case with a staff attorney at Appellate Defenders, Inc.
3. I have advised appellant by letter that a brief on [HIS] behalf is being filed according to the procedures outlined in *In re Sade C.* (1996) 13 Cal.4th 952 and *Anders v. California* (1967) 386 U.S. 738, and a copy of this brief has been provided to [HIM].
4. I have further advised appellant by letter that this court may allow [HIM] to personally file a supplemental brief in this case raising any points which [HE] chooses to call to the court's attention. I have sent a copy of the appellate record to appellant to assist [HIM] in filing a supplemental brief.
5. I do not hereby request to be relieved as appointed counsel but will freely withdraw should appellant request that I do so.

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

Executed on [DATE]

[ATTORNEY NAME]