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Attorney for Defendant and Appellant

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],) APPELLANT'S MOTION TO
Plaintiff and Respondent,) CONSOLIDATE CASE NUMBERS
v.) [CASE #] AND [CASE #]; EXTENSION
) OF TIME TO FILE APPELLANT'S
[PARENT'S INITIALS] (mother/father),) OPENING BRIEF

Defendant and Appellant.)

TO: THE HONORABLE [JUSTICE], PRESIDING JUSTICE, AND ASSOCIATE
JUSTICES OF THE FOURTH DISTRICT COURT OF APPEAL, DIVISION ONE:

Appellant-[mother/father] [PARENT'S NAME & LAST INITIAL] CAMI C.,
moves this Court for an order consolidating case numbers [CASE #] and [CASE #], now
pending before this Court. The basis for this motion is more particularly set forth in the
attached memorandum of points and authorities and declaration of appointed counsel,
[ATTORNEY NAME].

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO CONSOLIDATE**

I.

**THE REVIEWING COURT HAS INHERENT POWER AND
BOARD DISCRETION TO CONSOLIDATE APPEALS
INVOLVING COMMON ISSUES OF FACT OR LAW.**

There is no express rule of court governing applications to consolidate appeals. However, California Rules of Court, rule 8.147(b), refers to use of records from prior appeals on subsequent appeals in the same case, and has been interpreted in a manner which promotes consolidation of appeals, unless it can be shown that a party would be prejudiced by consolidation. (*General Elec. Co. v. Fed. Etc., Distribution Co.* (1954) 122 Cal.App.2d 509, 511.)

Witkin is in agreement:

Where separate actions, related in subject matter and issues are consolidated for trial (see Pleading, sec. 298), or where actions separately tried are nevertheless so related, they may often profitably be considered together on appeal. So far as the reviewing court is concerned, it may without order place them on the calendar together, make use of briefs and arguments interchangeably, and write only one detailed opinion, deciding the other cases on the authority of the first. (See *infra*, sec. 562.) An order of consolidation, however, goes further: It allows the parties to all the appeals to prepare a single record and set of briefs.

(9 Witkin, California Procedure (3d Ed., 1985), Appeals, sec. 359, Consolidation of Cases on Appeal, pp. 528-529.)

Rule 8.50(d), California Rules of Court, affords the Chief Justice or presiding justice to “rule on the application.” Certainly judicial economy, as well as public economy

(including payment at public expense of appointed counsel’s fees for several versus a single brief, as well as the public expense of the respondent governmental entity in opposing several briefs versus a single brief) compels the conclusion that all interests would be best served by an order consolidating the appeals in this action. Thus, consolidation of the appeals is warranted herein.

CONCLUSION

For the reasons set forth above, and those included in the attached declaration by [ATTORNEY NAME], appellant requests the two pending appeals, case numbers [CASE #] and [CASE #], be consolidated for briefing and decision.

DATE: _____

[ATTORNEY NAME]
COUNSEL FOR APPELLANT

DECLARATION OF [ATTORNEY NAME], Esq.

I, [ATTORNEY NAME], declare:

1. On March 25, 2003, I was appointed to represent appellant, Marilyn C., in case number [CASE #]. On April 3, 2003, I was appointed to represent the same appellant in case number [CASE #]. I am the attorney appointed in both cases.

2. The record in case number [CASE #] was filed prior to my appointment and this court extended the due date to file appellant's opening brief to April 24, 2003.

3. The record in case number [CASE #] was likewise filed prior to my appointment and this court extended the due date to file appellant's opening brief to May 1, 2003.

4. Both appeals derive from the same dependency proceeding in the superior court, case number [CASE #], involving appellant's daughter, Elizabeth C. Appellant filed her first notice of appeal on January 9, 2003, with her notice specifically appealing from the rulings made at her daughter's jurisdictional hearing that concluded on December 20, 2002. (C.T. p. 204; [CASE #].) Appellant filed her second notice of appeal on February 5, 2003, with her notice specifically stating she was appealing from the rulings made at her daughter's dispositional hearing held January 15, 16, and 17, 2003. (C.T. p. 9; [CASE #].)

5. The law is clear that a jurisdictional finding, while not appealable, may be reviewed in an appeal from the dispositional order. (*In re James J.* (1986) 187 Cal.App.3d

1339, 1342; *In re Megan B.* (1991) 235 Cal.App.3d 942; *In re Rebekah R.* (1994) 27 Cal.App.4th 1638.) In the instant case, the juvenile court advised appellant of her appellate rights at the end of her daughter's jurisdictional hearing and appellant then filed her notice of appeal. (C.T. p. 204, 259; 7 R.T. pp. 856-857; [CASE #].) The court's advisement, as well as appellant's resultant notice of appeal, were premature.

6. Given these legal parameters and in the interests of judicial economy, it would serve the interests of all parties, including the Court, if briefing were consolidated.

7. Appellant therefore requests the Court consolidate the two cases and grant an extension of time to file the combined opening brief to 30 days after the order consolidating the appeals is made.

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

Executed at [CITY NAME], California, on [DATE].

[ATTORNEY NAME]
COUNSEL FOR APPELLANT