

Dependency Case Law Update

September 2019 through February 2020

Summary

- Covers 13 published cases
- Reversals – 7 [more than half of the cases]
- Panel attorneys on appeal – 10 cases [more than 75%]
- Notice issues – 3 cases
- Minors appeal – 3 cases
- Agency appealed -- 1 case [won]
- Relatives/de facto parents appeal – 2 cases

Case origins

- Cases from 2d District [Los Angeles]
 - 5 opinions
- Cases from 4th District [San Bernardino, San Diego, Imperial]
 - 5 opinions

Cases from 1st, 3d and 6th Districts

-- from Alameda, Sacramento, Santa Clara

Reversals

- Opinions reversing the trial court – 7
 - Not all positive cases for parents
 - 6 of the 7 cases were filed by panel attorneys

Attorneys include:

J. Shargel, J. Love, V. Lankford, E. Min, J. McGowan, M. Chaitin

Attorneys with the most published cases:

J. Shargel & J. Love [2 cases each]

Novel Issues

- Fail to State Facts For Removal
 - *In re D.P.* (Jan 8, 2020, B295780) ___ Cal.App.5th ___ [2020 WL 582789, B295780]
- Notice of Right to Appeal at Juris/Dispo
 - *In re J.A.* (2019) 43 Cal.App.5th 49
- Petition Under 300, subd. (f)
 - *In re I.I.* (2019) 42 Cal.App.5th 971
- Petition When a Parent Absconds
 - *In re J.M.* (2019) 40 Cal.App.5th 913

Novel Issues Continued

- Discovery for Jurisdiction Trial
 - *In re William M.W.* (2019) 43 Cal.App.5th 573
- Notice at the Section 366.26 Hearing
 - *In re D.R.* (2019) 39 Cal.App.5th 583
 - *In re M.S.* (2019) 41 Cal.App.5th 568
- Bypass & The Children Appeal
 - *In re I.A.* (2019) 40 Cal.App.5th 19
- Guardian Who Does Not Fit Within The Statute
 - *In re J.M.* (2020) 44 Cal.App.5th 707

Issues

- Jurisdiction [the most cases at 4]
- Discovery for Jurisdiction Trial
- Removal from a non-custodial parent
- Bypass
- 387 Petition [who has standing to appeal]
- Notice at the Section 366.26 Hearing
- Placement at the Section 366.26 Hearing
- [No cases: beneficial-relationship; ICWA; UCCJEA; paternity; 388; non-minor dependents]

Indian Child Welfare Act (ICWA) CHANGES

- NEW STATUTORY CITES
- **UNPUBLISHED** OPINION
- Provisions affecting the need to send ICWA notice and how to determine there is “reason to know” a child is an Indian Child were completely rewritten effective January 1, 2019. They are sections 224.2 and 224.3 of the Welfare and Institutions Code. Section 224.2, subdivision (d) narrows the circumstances for finding there is “reason to know” a child is an Indian child, which triggers the obligation to send ICWA notices to the tribe(s). There is no published case on this yet, but there is an unpublished Div. One case, *In re Daniel H.*, D076331. The case explains this court’s view of the new legislation, how it affects the duty of inquiry, and what triggers the obligation to send ICWA notice under the new provisions.

JURISDICTION

- ***In re D.P.*** (Jan 8, 2020) [2020 WL 582789, B295780] (2d Dist., Div. 3) [Los Angeles]
 - **Where the trial court failed to state the facts used as the basis for its decision to remove D.P. from his mother, the removal was not harmless and the Court of Appeal reversed.**

JURISDICTION

- ***In re I.I.* (2019) 42 Cal.App.5th 971 (2d Dist., Div. 1) [Los Angeles]**
 - **Where a prior dependency found the parents physically abused the children's siblings leading to the death of a sibling, the trial court was required to assert jurisdiction based on the uncontroverted evidence the parents caused a sibling's death. [See §300, subd. (f).]**

JURISDICTION

- ***In re J.M.* (2019) 40 Cal.App.5th 913 (2d Dist., Div. 5) [Los Angeles]**
 - **After mother absconded with her children for nine months, the Court of Appeal held there was no substantial evidence to support the trial court's decision to decline to assume jurisdiction even though the original evidence was now old.**

JURISDICTION

- ***In re J.A.* (2019) 43 Cal.App.5th 49 (4th Dist., Div. 2) [San Bernardino]**
 - **The trial court's failure to inform mother of her right to appeal at the jurisdiction and disposition hearing did not constitute good cause to consider jurisdiction issues on appeal when mother filed her notice of appeal 16 months late.**

DISCOVERY

- ***In re William M.W.* (2019) 43 Cal.App.5th 573 (1st Dist., Div. 1) [Alameda]**
 - **Without finding a right to have discovery disclosed to parents in a specific form, the Court of Appeal held the juvenile court failed to exercise its discretion in making orders regarding discovery and reversed and remanded.**

DISPOSITION FOR NON-CUSTODIAL PARENT

- ***In re Adam H.*** (2019) 43 Cal.App.5th 27 (2d Dist., Div. 5) [Los Angeles]
 - **The Court of Appeal reversed finding the error not harmless where the trial court removed the child from father pursuant to section 361 even though he was a non-custodial parent. [See §361.2.]**

BYPASS IN MINOR'S APPEAL

- ***In re I.A.*** (2019) 40 Cal.App.5th 19 (4th Dist., Div. 2) [San Bernardino]
 - **Children appeal from orders granting mother reunification services arguing the bypass provision applied to mother and she was not entitled to reunification services and the Court of Appeal agreed. [See §361.5, subd. (b)(10).]**

NOTICE AT THE SECTION 366.26 HEARING

- ***In re M.S.* (2019) 41 Cal.App.5th 568 (4th Dist., Div. 1) [Imperial]**
 - **When the agency had known mother's address since the start of the case, it was error for the trial court to find that mother's whereabouts were unknown, to deny reunification services to mother based such a finding, and to terminate parental rights at the subsequent section 366.26 hearing.**
- ***In re D.R.* (2019) 39 Cal.App.5th 583 (2d Dist., Div. 8) [Los Angeles]**
 - **Where the agency only noticed father by publication and failed to comply the Hague Service Convention (HSC) even though father was a resident of Mexico, the lack of reasonable due diligence warranted reversal of the judgment and remand.**

PLACEMENT AT THE § 366.26 HEARING

- ***In re J.M.* (2020) 44 Cal.App.5th 707 (6th Dist.) [Santa Clara]**
 - **Even when a guardian does not plan to have the child in her home, the trial court properly entered a permanent plan of legal guardianship with continued dependency jurisdiction and appointed grandmother as legal guardian.**
- ***In re L.M.* (2019) 39 Cal.App.5th 898 (4th Dist., Div. 1) [San Diego]**
 - **Where two possible placements are both appropriate, the trial court did not err by focusing on the child's best interest and placing the child with the foster family who had previously adopted the child's sibling.**