

**FIRST DISTRICT APPELLATE PROJECT  
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**CURRENT ISSUES AND ISSUE SPOTTING IN  
DEPENDENCY CASES**

**MELISSA NAPPAN  
HASSAN GORQUINPOUR  
CAITLIN CHRISTIAN**

**Central California Appellate Program  
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# **CURRENT ISSUES AND ISSUE SPOTTING IN DEPENDENCY CASES**

Caitlin Christian, Hassan Gorguinpour, and Melissa Nappan

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## ISSUE SPOTTING IN DEPENDENCY APPEALS

General Framework: (1) Begin with expansive list of possible issues during earliest stages of case; (2) Cull out unworkable issues keeping in the mind the standards of frivolousness and the likely counter arguments.

### 1. Casting a Wide Net at the Beginning: Ideas to Create the Broadest Possible Set of Issues to Consider and Reject Later

- a. While reading the record, keep a log of potential issues, oddities, or irritations
- b. Also keep a log of record completion questions to assess issues
- c. Focus on legal or procedural problems
- d. Talk to client? Yes!
- e. Use checklists
- f. Read Dependency Case Summaries, etc.
- g. Read a bunch of odds and ends
  - i. New Laws Report  
(<https://leginfo.legislature.ca.gov/faces/publicationsTemplate.xhtml>)
  - ii. New and Amended Court Rules  
(<http://www.courts.ca.gov/3025.htm>)
  - iii. ABA parent attorney list serve  
([CHILD-PARENTSATTORNEYS@MAIL.AMERICANBAR.ORG](mailto:CHILD-PARENTSATTORNEYS@MAIL.AMERICANBAR.ORG))
  - iv. Read non-dependency cases (dental malpractice can be relevant (see below))

The result is a, hopefully, long list of possible of issues to consider next.

### 2. Once You've Got the Long List, Process it: Ideas for What to do With That List

- a. Group similar issues;
- b. Research (reasonably) looking for arguability
- c. If it's not frivolous, it's arguable
  - i. Standard in *People v. Landers* (Jan. 14, 2019, No. A145037)  
\_\_\_\_ Cal.App.5th \_\_\_\_
  - ii. Conflict between cases
- d. How to decide

- i. Figure out your hold up
- ii. What will the county counsel say?
- iii. What will the reply brief say?
- iv. How am I going to lose this?
- v. On the fence? Talk to the project about whether a *Phoenix H.* review is necessary.

### **3. Dental Malpractice and Your Practice**

- a. *Samara v. Matar* (2018) 5 Cal.5th 322
- b. The joys of just clicking around
- c. Finality when you've been ignored

## PUBLISHED REVERSALS AND INTERESTING RESULTS

### 1. Indian Child Welfare Act (ICWA)

<i>In re Miguel S.</i> (2016) 248 Cal.App.4th 164 (G052683) [depublished]	Active efforts to secure membership.
<i>In re Abbigail A.</i> (2016) 1 Cal.5th 83 (S220187)	Overrule Rule of Court on ICWA because it conflicts with statute.
<i>In re Isaiah W.</i> (S221263) 1 Cal.5th 1 (S221263)	Continuing duty to inquire cannot be forfeited by failure to appeal earlier.
<i>In re Michael V.</i> (2016) 3 Cal.App.5th 225 (B268149)	Investigation includes contacting extended family members.
<i>In re Charlotte V.</i> (2016) 6 Cal.App.5th 51 (B269633)	Affirm. No requirement that “non-lineal” ancestors be included on notice.
<i>In re J.L.</i> (2017) 10 Cal.App.5th 913 (D070826)	“Family lore” is not sufficient to trigger notice requirement.
<i>In re Elizabeth M.</i> (2018) 19 Cal.App.5th 768 (B284123)	Reverse for investigation and notice. “Red Tail tribe” could have been “Red Tail Hawk” clan of Cherokee Nation. Speak to relatives.
<i>In re K.R.</i> (2018) 20 Cal.App.5th 701 (E069276)	Remand for proper investigation and provision of full information on notice forms. Interview extended family.
<i>In re C.A.</i> (2018) 24 Cal.App.5th 511 (D073229)	Affirm. Non-biological, non-adoptive father could not produce ICWA status for child.
<i>In re K.L.</i> (2018) 27 Cal.App.5th 332 (C079100)	Affirm. Placement with other parent was not a foster care placement, even where parent was non-biological presumed father.

<i>In re N.G.</i> (2018) 27 Cal.App.5th 474 (E070338)	Reverse because of incomplete inquiry. Paternal relatives were available and could have provided added information on Cherokee ancestry.
<i>In re E.H.</i> (2018) 26 Cal.App.5th 1058 (D073635)	Reverse for notice and inquiry. Form did not specify exact relationship between parent and a possible Indian ancestor. Duty to confirm relationship with relatives.

## 2. Procedural Issues

<i>In re Armando L.</i> (2016) 1 Cal.App.5th 606 (F072715)	Parent has standing to appeal from dismissal of jurisdiction.
<i>In re Alexander P.</i> (2016) 4 Cal.App.5th 475 (A146040)	Juvenile court not bound by family court paternity orders entered when dependency was active; but error was harmless.
<i>M.C. v. Superior Court</i> (2016) 3 Cal.App.5th 838 (A148627)	Court cannot terminate family reunification services early except through Welfare and Institutions Code <sup>1</sup> section 388 process.
<i>In re Korbin Z.</i> (2016) 3 Cal.App.5th 511 (B269429)	Nine-year-old child can't be given sole discretion over therapeutic visits.
<i>In re R.L.</i> (2016) 4 Cal.App.5th 125 (D069729)	No UCCJEA home-state jurisdiction because child only in California briefly; but harmless because court had emergency jurisdiction.
<i>In re O.C.</i> (2016) 5 Cal.App.5th 1173 (A147577)	Notice needed to all relevant tribes. BIA notice a substitute for that.
<i>In re Isaiah S.</i> (2016) 5 Cal.App.5th 428 (D069928)	Affirm. Mother lacked standing to seek relative placement because no effect on her termination of parental rights claims.

<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

<i>B.B. v. Superior Court</i> (2016) 6 Cal.App.5th 563 (D070894)	Termination of legal guardianship requires section 388 petition, not a new section 300 petition; but error was harmless.
<i>N.S. v. Superior Court</i> (2016) 7 Cal.App.5th 713 (A148694)	Minor's petition to prevent disclosure of therapy records. Answering county questions did not tender the issue of her mental condition; privacy remains.
<i>In re Marcus C.</i> (2017) 8 Cal.App.5th 1036 (B270853) [depublished]	County counsel appeal. Court must allow amendment according to proof as long as there is no notice problem. Facts disclosed prior to hearing.
<i>In re Grace P.</i> (2017) 8 Cal.App.5th 605 (B275689)	Right to a contested hearing on the application of the beneficial parent-child relationship exception to the termination of parental rights under section 366.26(c)(1)(B)(i) upon sufficient offer of proof.
<i>Johnny W. v. Superior Court</i> (2017) 9 Cal.App.5th 559 (A150579)	Uncontested detention hearing is not resolving a factual dispute. So, a motion to disqualify the judge under Code of Civil Procedure section 170.6 still available.
<i>In re Alayah J.</i> (2017) 9 Cal.App.5th 469 (B275728)	Court cannot make a section 388 hearing contingent on the parent saving parental rights at the .26. Section 388 is an escape mechanism.
<i>In re J.S.</i> (2017) 10 Cal.App.5th 1071 (E067122)	Reverse .26 because court denied mother chance to testify about sibling relationship, which was relevant to issues at the hearing.

<i>In re Jesse S.</i> (2017) 12 Cal.App.5th 611 (G054169)	Non-minor could not re-enter foster care where adoptive parents were estranged but still taking money from state. Legislature should fix anomalous result.
<i>In re A.K.</i> (2017) 12 Cal.App.5th 492 (C081545)	No parent standing to assert relative placement after services were terminated; also forfeited.
<i>In re J.P.</i> (2017) 15 Cal.App.5th 789 (B281438)	Failure to appoint counsel for parent at section 388 hearing to terminate guardianship violated due process.
<i>In re C.M.</i> (2017) 15 Cal.App.5th 376 (D072056)	“Conditional” placement order not permitted. Court must either remove the child or return the child.
<i>In re Destiny D.</i> (2017) 15 Cal.App.5th 197 (B279742)	Affirm. Court had discretion to dismiss jurisdiction at jurisdictional hearing.
<i>In re Kayla W.</i> (2017) 16 Cal.App.5th 409 (B277567)	Mother had standing to participate in hearing on terminating probate guardianship. She was the noncustodial parent in that proceeding.
<i>In re H.C.</i> (2017) 17 Cal.App.5th 1261 (D072368)	Reverse termination of dependency for non-minor dependent. Getting married did not make her ineligible for extended services.
<i>J.H. v. Superior Court</i> (2018) 20 Cal.App.5th 530 (B284802)	Affirm. <i>People v. Sanchez</i> (2016) 63 Cal.4th 665 does not apply to social worker under section 358.
<i>In re M.S.</i> (2018) 20 Cal.App.5th 899 (E067604) [depublished]	Reverse finding of presumed status on collateral estoppel grounds because family court had previously denied that status.
<i>In re I.C.</i> (2018) 4 Cal.5th 869 (S229276)	Juvenile court could not consider testimony of child who was not truth qualified and whose testimony did not show special indicia of reliability.



<i>In re Sofia M.</i> (2018) 24 Cal.App.5th 1038 (G055752)	Affirm. Child refused visits. But onus on parent to seek and suggest a remedy in the trial court for non-enforcement of visitation order.
<i>In re D.Y.</i> (2018) 26 Cal.App.5th 1044 (B287849)	Reverse denial of a continuance where parties agreed record was incomplete and parents not given notice that jurisdiction might be terminated at hearing.
<i>In re M.W.</i> (2018) 26 Cal.App.5th 921 (E068981)	Court incorrectly thought that former foster parent could not legally be a Supervised Independent Living Placement. Remand for hearing without legal error.
<i>In re G.B.</i> (2018) 28 Cal.App.5th 475 (B284833)	Court improperly amended petition to conform to proof sua sponte, to add counts against father who was non-offending in county's petition. Court cannot initiate dependency proceedings against a parent.
<i>In re E.R.</i> (2018) 28 Cal.App.5th 74 (B288376)	Affirm. Court properly took subject matter jurisdiction after other state expressly refused because California was most proper forum.

### 3. Standard Applied / Missing Elements

<i>In re Andrew S.</i> (2016) 2 Cal.App.5th 536 (B268361)	<ul style="list-style-type: none"> <li>- Section 300(g) requires a failure to arrange care, not just absence;</li> <li>- An incarcerated parent is judged under 361.2 at disposition.</li> </ul>
<i>In re J.E.</i> (2016) 3 Cal.App.5th 557 (A147724)	Affirm after county counsel appeal. Services must be tailored to the core needs of the family, including psychological assessments of the minors.

<i>In re Julien H.</i> (2016) 3 Cal.App.5th 1084 (B267953)	Applying section 361 rather than section 361.2 to a noncustodial parent was error, but harmless because no showing that the court wouldn't reach same result.
<i>In re Logan B.</i> (2016) 3 Cal.App.5th 1000 (B270252)	Affirm. "Compelling" reason is part of beneficial parent-child relationship exception to the termination of parental rights under section 366.26(c)(1)(B)(i).
<i>In re Michael S.</i> (2016) 3 Cal.App.5th 977 (B269598)	Affirm. Section 361(c) allows removal from just one custodial parent as needed.
<i>In re Z.G.</i> (2016) 5 Cal.App.5th 705 (G053232)	Minor's appeal. Reverse order for family reunification services. Parents' neglect caused sibling death based on co-sleeping and drug use.
<i>In re Anthony Q.</i> (2016) 5 Cal.App.5th 336 (B267352)	Error to remove from noncustodial parent under section 361(c) but harmless because court has other authority to remove under section 361(a).
<i>In re D.R.</i> (2016) 6 Cal.App.5th 885 (B269663)	Reverse guardianship order because evidence did not show relative caretaker was unwilling to adopt.
<i>In re Carl H.</i> (2017) 7 Cal.App.5th 1019 (A147220)	Minor's appeal. Reverse dismissal of dependency with return to parent. Court improperly treated custodial parent as a noncustodial parent.
<i>In re Matthew C.</i> (2017) 9 Cal.App.5th 1090 (A147877)	Affirm. Denial of visitation can be based on either physical or emotional harm.
<i>In re T.W.</i> (2017) 9 Cal.App.5th 339 (A148171)	Reverse reasonable services finding. Parent's status out of state does not eliminate need for services, and social worker erred in providing only a single telephone visit with child.

<i>In re Priscilla A.</i> (2017) 11 Cal.App.5th 551 (B276745) [petition for review granted and case transferred to Court of Appeal with directions to vacate its decision and reconsider the cause in light of <i>In re R.T.</i> (2017) 3 Cal.5th 622.]	No section 300(b) jurisdiction where threat to minor was from self-harm and not parental neglect.
<i>In re A.G.</i> (2017) 12 Cal.App.5th 994 (D071620)	Reverse reasonable services where agency failed to offer or coordinate any services to father deported to Mexico.
<i>In re A.C.</i> (2017) 13 Cal.App.5th 661 (D071772)	For section 300(b), no need to show neglect or unfitness.
<i>In re L.L.</i> (2017) 13 Cal.App.5th 1302 (D071661)	Third parent finding reversed. Need to show detriment from not granting. Juvenile court had applied inverse standard.
<i>In re D.H.</i> (2017) 14 Cal.App.5th 719 (E066818)	Reverse termination of parental rights. Even after legal guardianship terminated, still need some showing of parental unfitness to end parental rights.
<i>In re J.P.</i> (2017) 14 Cal.App.5th 616 (B277756)	- No reasonable services where family reunification plan was not in parents' language. - Not mooted by return to other parent because parent lost physical and legal custody.
<i>In re Joaquin C.</i> (2017) 15 Cal.App.5th 537 (B277434)	No section 300(b) jurisdiction based on mother's mental health issues where kids otherwise fine and mother had family support system.
<i>In re C.V.</i> (2017) 15 Cal.App.5th 566 (B278331)	No section 300(b) jurisdiction where problematic father was not in picture because he was arrested and where unloaded gun was not accessible by three-month-old child.

<i>In re Luis H.</i> (2017) 14 Cal.App.5th 1223 (B276237)	Minor's appeal. Affirm denial of petition regarding siblings of sexually abused child. Showing risk to these children required specific proof as to their risk of harm.
<i>In re Aiden L.</i> (2017) 16 Cal.App.5th 508 (B277445)	Reverse termination of parental rights for UCCJEA hearing. Parents in California only to work at time of dependency case. Remanded for hearing on California jurisdiction over family.
<i>Jennifer S. v. Superior Court</i> (2017) 15 Cal.App.5th 1113 (A151627)	Affirm bypass. But Court of Appeal criticized sparse social worker reports.
<i>In re J.G.</i> (2018) 20 Cal.App.5th 173 (D072293) [depublished]	Minor's appeal. Reverse order leaving children with relative. No showing of intent to harm needed for removal. Failure to provide adequate food sufficient.
<i>In re A.L.</i> (2017) 18 Cal.App.5th 1044 (B281449)	No section 300(b) jurisdiction where mental illness did not lead to harm, mother had family support, and section 5150 did not occur when mother had children.
<i>In re E.D.</i> (2018) 21 Cal.App.5th 664 (B284657) [depublished]	- No section 300(b) jurisdiction where there was only one domestic violence incident and the relationship was over. - Justiciable because finding could have consequences in the future.
<i>W.P. v. Superior Court</i> (2018) 20 Cal.App.5th 1196 (E069569)	Reverse. When older children placed in separate home, longer family reunification timeline applied to them than to the child under three.
<i>T.J. v. Superior Court</i> (2018) 21 Cal.App.5th 1229 (A153034)	Reverse order terminating family reunification services where mother penalized for not finding housing but given no specialized help to do so given her intellectual disability. Also, mother wait listed on many services.

<p><i>In re D.L.</i> (2018) 22 Cal.App.5th 1142 (B284646)</p>	<p>No section 300(b) jurisdiction where loaded gun was gone by the time of the hearing because father took it and moved out of the house.</p>
<p><i>In re E.A.</i> (2018) 24 Cal.App.5th 648 (D073041)</p>	<p>Minor's appeal. Reverse denial of section 300(g). Parents abandoned and kids happened to go to grandparents. Parents did not "arrange for care," so (g) count still supported.</p>