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"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

Jurisdiction—WIC 300(b)(1); WIC 300(g)

In re R.M.—published 1/30/24; Second Dist., Div. Three
Docket No. B327716; 99 Cal.App.5th 240
Link to Case: https://www.courts.ca.gov/opinions/documents/B327716.PDF

INCARCERATION ALONE DOES NOT SUPPORT JURISDICTION UNDER WIC 300(B)(1) OR 300(G). THE PARENT MUST BE UNABLE OR UNWILLING TO MAKE AN APPROPRIATE CUSTODY ARRANGEMENT.

On December 8, 2022, R.M., mother, and father were in a car that was stopped after it made an illegal U-turn. Mother and father had felony warrants for murder and were taken into custody; R.M. was released to the agency. Father identified paternal grandfather as a possible caregiver. Mother identified paternal grandmother as a possible caregiver, indicating that paternal grandmother cares for R.M.'s half-sister. Maternal grandmother also contacted the agency requesting placement. The agency filed a WIC 300 petition under subdivisions (b)(1) and (g) alleging mother and father's failure to protect due to their arrest, and their failure to provide R.M. with care and the necessities of life. The agency did not include the half-sister in the petition because she resided with paternal grandmother. R.M. was detained from mother and father on December 13, 2022. Three days later, over the agency's objection, R.M. was placed with paternal grandmother.

Subsequently, mother informed the agency she wanted to provide paternal grandmother with temporary legal custody while incarcerated. On February 27, 2023, the court sustained the petition, removed R.M. from mother and father, and ordered family reunification services. Mother appealed.

Reversed and vacated. The agency did not meet its burden of demonstrating that something more than the parents' incarceration supported jurisdiction under subdivisions (b)(1) and (g). Subdivision (b)(1) applies when a parent willfully or negligently fails to provide for the child, or the parent is unable to provide for the child due to mental illness, developmental disability, or substance abuse. Subdivision (g) applies when, at the time of the jurisdictional hearing, a parent is incarcerated and cannot make, or is physically or mentally incapable of making, an appropriate plan for the child. R.M.'s parents did not have an opportunity to arrange for his care before the agency intervened. Mother, however, identified paternal grandmother as a caregiver, sought to legally formalize paternal grandmother's custody of R.M. during her incarceration, and maintained regular contact with paternal grandmother, R.M., and R.M.'s half-sister, evidencing her ability and willingness to make an appropriate custody arrangement. (EG)

Restraining Order—WIC 213.5

In re Lilianna C.—published 2/8/24; Second Dist., Div. Two
Docket No. B324755; 99 Cal.App.5th 638
Link to case: https://www.courts.ca.gov/opinions/documents/B324755.PDF

THE JUVENILE COURT'S AUTHORITY UNDER WIC 213.5 TO ISSUE A RESTRAINING ORDER PROTECTING THE "CHILD OR ANY OTHER CHILD IN THE HOUSEHOLD" APPLIES WHENEVER A DEPENDENCY PETITION HAS BEEN FILED.

At Lilianna's birth, the juvenile court removed her from mother due to positive toxicology test results and mother's history of substance abuse. The court eventually returned Lilianna to mother and terminated jurisdiction. When Lilianna was three, she was detained from her mother again – this time due to concerns that included mother's mental health problems and substance abuse. Lilianna was placed in the home of her maternal aunt (MA) and maternal uncle (MU), whose toddler-aged child (Lilianna's maternal cousin (MC)) resided with them. During the pendency of the case, Mother left MA a voicemail threatening to murder her for allowing Lilianna to have contact with the maternal grandmother (MGM) whom she believed, without basis, was a child molester. In the same voicemail, Mother accused MA of being a cult member and having mental illness. Mother then left MGM a voicemail, accusing her of being a child molester and a cult member. Mother

subsequently made three attempts to call MU. Shortly thereafter, the court issued a temporary restraining order against mother that prohibited contact with Lilianna, MA, MU, MC, and MGM, aside from her scheduled visits with Lilianna. At the jurisdiction and dispositional hearing, the court sustained the petition as to mother's substance abuse and failure to make an appropriate plan of care of the child, and ordered reunification services. The court ordered Lilianna to be placed with MA, MU, and MC. As part of the proceedings, the court issued a three-year restraining order prohibiting mother from harassing or contacting Lilianna, MA, MU, MC, and MGM, with a carve-out for visitation with Lilianna. Mother appealed the restraining order.

Affirmed in part; reversed in part. WIC 213.5 provides that, after a petition has been filed pursuant to WIC 311, the juvenile court has the exclusive jurisdiction to issue a restraining order protecting the child, "any other child in the household," and "any parent, legal guardian or current caretaker of the child" from harassment by a parent. WIC 311 refers to petitions filed by a "probation officer." On appeal, mother made the two-fold argument that there was insufficient evidence to support the order restraining her from Lilianna and that WIC 213.5 did not authorize the inclusion of MC and MGM, who were of attenuated relationship to the dependent child, as protected persons in the restraining order. (I) As a preliminary matter, the Court rejected any literal reading of WIC 213.5(a) that restricts the juvenile court's authority to only those cases in which the probation officer has filed the dependency petition. To give the text its literal meaning would lead to the absurd result of stripping from the juvenile court its ability to provide maximum safety and protection to abused and neglected children. Additionally, WIC 213.5's legislative history reveals that the drafters, when amending the statute in 1996, never intended to constrain the juvenile court but to clarify that its authority began upon the filing of a petition to declare a child a dependent. Another drafting error was observed in the 1996 amendment of WIC 304 which likewise provides that, after a petition has been filed pursuant to WIC 311, no other division of the superior court shall hear proceedings regarding a child in juvenile dependency proceedings. Both sections suffer from the drafters' oversight to additionally reference WIC 325, which authorizes "social workers" to file petitions. (II). A juvenile court may issue a restraining order when it finds that the person to be restrained has "disturbed the peace" of the person to be protected. Evidence that the restrained party destroyed the protected person's mental or emotional calm is enough; there is no requirement of prior physical abuse or a reasonable apprehension of future physical abuse. Here, the evidence showed Mother disturbed the child's peace by regularly yelling at and sometimes striking the child, causing her to be in

fear. (III) Mother also argued that MC and MGM did not qualify as protected persons under WIC 213.5. Because the statute authorizes protection over the child and "other children in the household," the restraining order appropriately reached the MC who was a child in Lilianna's household. However, because MGM was not a "legal guardian" or "current caretaker" of the child (or, in other words, not one of the enumerated persons in WIC 213.5), she should not have been included as a protected person in the restraining order. This is not to say that MGM had no recourse under another statute for protection. (ML)

Restraining Order—WIC 213.5

In re H.D.—published 2/14/24; Fourth Dist., Div. One
Docket No. D082615; 99 Cal.App.5th 814
Link to case: https://www.courts.ca.gov/opinions/documents/D082615.PDF

(1) THE JUVENILE COURT HAS THE AUTHORITY UNDER WIC 213.5 TO ISSUE A RESTRAINING ORDER REGARDLESS OF WHETHER THE PROBATION OFFICER OR SOCIAL WORKER FILED THE DEPENDENCY PETITION. (2) AT THIS TIME, MOST JUVENILE STATUTORY PROVISIONS HAVE BEEN REVISED TO REPLACE "PROBATION OFFICER" WITH "SOCIAL WORKER," BUT THOSE TERMS ARE INTERCHANGEABLE.

The child welfare agency's social worker filed a section 300 petition on behalf of 14-year-old, H.D., and 10-year-old, A.D., which led to their removal from Mother due to drug abuse. Eventually, H.D. was ordered into legal guardianship and parental rights over A.D. were terminated. Before A.D. was adopted, A.D. filed a request for a temporary restraining order against Mother. The juvenile court granted the request and set a restraining order (RO) hearing. At the RO hearing, Mother asked for its dismissal. The juvenile court granted the three-year permanent RO against Mother. Mother appealed.

Affirmed. On appeal, Mother raised the same argument as the appellant in *In re Lilianna C.* (Feb. 8, 2024, B324755) 99 Cal.App.5th 638 (*Lilianna C.*) – that the plain language of section 213.5 that directs the reader to section 311 restricts the juvenile court's authority to issue a RO to only those cases where the probation officer, rather than the social worker, has filed the section 300 dependency petition over the child. In analyzing the statute, words are given their plain, commonsense meaning, but portions at issue are also interpreted congruently with their overall statutory scheme. Juvenile law was originally administered by the probation officer. It was not until 1968 that the

Legislature authorized the delegation of child welfare duties from the probation officer to the social worker and, in 1976, section 300 was enacted to govern dependent children. Section 272 was also passed to authorize a county's board of supervisors to delegate duties to dependent children from probation officers to social workers. (See also Cal. Rules of Court, rules 5.620(b) & 5.630(a)(1).) Thus, where, as here, the child's dependency case is in a county that has approved this delegation of duties, the juvenile court's authority to issue a RO under section 213.5 extends to petitions filed by social workers. Moreover, section 215 provides that "probation officer" shall include "any social worker in a county welfare department" and cites to section 272. (See also rule 5.502(31), (39).) (ML)

ICWA—WIC 224.2

In re Samantha F.—published 2/22/24; Fourth Dist., Div. Two
Docket No. E080888
Link to case: https://www.courts.ca.gov/opinions/documents/E080888.PDF

THE DUTY TO INQUIRE OF KNOWN RELATIVES APPLIES REGARDLESS OF HOW A CHILD ENTERS CUSTODY.

In 2021, the agency took infant Samantha into protective custody pursuant to a section 340 warrant. Mother and father repeatedly denied Indian ancestry. The record was silent as to whether the agency asked known relatives about Indian ancestry. Multiple relatives participated in the proceedings. Paternal grandparents and a paternal aunt attended the initial hearing, at which the court detained Samantha from parents. Two paternal aunts and an uncle attended the combined jurisdictional and dispositional hearing, at which the court removed Samantha from parents. The agency placed Samantha with paternal grandparents before placing her with a paternal aunt. The court terminated parental rights. Father timely appealed.

Reversed. The duty to inquire of extended relatives applies even when a child comes into protective custody pursuant to a warrant. The conclusion of some courts, including *In re Robert F.* (2023) 90 Cal.App.5th 492 and *In re Ja.O.* (2023) 91 Cal.App.5th 672 (review granted on both July 26, 2023), that the section 224.2(b) duty to inquire of known relatives applies only when a child is taken into temporary custody pursuant to section 306 is unpersuasive. The reasoning in *In re Delila D.* (2023) 93 Cal.App.5th 953 (review granted September 27, 2023) is persuasive. Children taken into protective custody and delivered to a social worker pursuant to section 340 are in temporary custody pursuant to section 306. All pre-petition removals of Indian children are "emergency removals" under the ICWA regardless of warrant status. Applying the same expanded duty of initial inquiry regardless of how a child

enters custody comports with federal ICWA standards, which imposes requirements for removal of an Indian child without consideration of warrant status. To do otherwise runs contrary to legislative intent and federal and state statutory schemes. The agency's failure to ask the many paternal relatives involved in the dependency proceedings about the child's possible Indian heritage was prejudicial error. The dissent finds the reasoning in *In re Robert F.* and its progeny persuasive. (SL)