

Case No. S267429

**IN THE SUPREME COURT FOR THE STATE OF
CALIFORNIA**

In re D.P.,
A Person Coming Under the Juvenile Court Law.

THE LOS ANGELES COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,
Plaintiff and Respondent,

v.

T.P.,
Defendant and Appellant.

**[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA
STATE ASSOCIATION OF COUNTIES IN SUPPORT OF
PLAINTIFF AND RESPONDENT THE LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

From an Unpublished Decision by the Court of Appeal
Second Appellate District, Division Five, Case No. B301135

Los Angeles Superior Court
Case No. 19CCJP00973
The Honorable Craig S. Barnes, Judge Presiding

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I. INTRODUCTION

The issues in this case regarding mootness touch on fundamental concerns in how counties deliver child welfare services and how courts conduct dependency proceedings while maintaining a focus on the best interests of the children involved. When a parent has been so injured by a dependency court's actions that it warrants an appeal and an extension of the proceedings, families, courts, and counties rely on concrete rules of justiciability so that while parents seek review, children can depend on the finality of lawful court orders to protect them from future abuse and/or neglect and preserve permanent placements. Appeals based on unsubstantiated claims of injury have the strong potential to waste resources, especially when considering the numerous services counties provide to families once an emergency response referral is received.

Allowing Appellant's unsupported claims to defeat mootness here could also burden court resources at a time when the COVID-19 pandemic continues to present challenges. Appellant's reasoning would have this Court adopt a standard that requires courts to extend hypothetical consequences of potential harms, regardless of their probability, past any natural conclusion. To ask courts to entertain appeals based on a parent's perceived stigma, without more, would be exceedingly inefficient and goes against the well-established rule that an appellant must show that a judicial hearing or process injuriously affects his or her rights or interest in an immediate and substantial way to avoid dismissal for mootness.

The precepts of justiciability weigh in favor of the existing mootness rules, which promote sound judicial economy during this critical time. Undoubtedly, parents who face actual, injurious stigmatization and placement on the Child Abuse Central Index ("CACI") without a significant form of redress as the result of dependency proceedings deserve this Court's attention.

Appellant’s claims in this case factually do not rise to that level, and certainly not to any level of harm the courts can meaningfully remedy.

All California counties administer child welfare and foster care services, directly interacting with children and families to address child abuse and neglect. Counties investigate reports of child abuse and provide case management and family services, maintaining hotlines for reporting suspected child abuse and neglect, and assigning dependency lawyers from the County Counsels’ offices to represent the best interests of children in dependency proceedings. Backlogs persist over a year and half into the pandemic and after hundreds of emergency orders issued from this Court meant to streamline court processes. Accepting Appellant’s reasoning does not just defeat mootness in this case, but nearly renders it meaningless, allowing the mere investigation into a parent to be grounds for establishing a justiciable appeal, an overbroad and potentially wasteful outcome.

The California State Association of Counties therefore urges this Court to uphold the Second District’s ruling and the existing rule that requires that parents claiming to be injured by dependency proceedings show immediate and substantial harm to defeat mootness.

II. ARGUMENT

A. Counties, tasked by the Legislature to administer a statewide system of child welfare, would strain to accommodate the increase in appeals that could flow from adopting overly broad grounds for appealing dependency proceedings.

Judicial economy plays an important role in determining mootness, addressing “matters of administrative convenience and efficiency” that strike at the core of how our justice system maintains a focus on valid, justiciable claims. (*United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.* (1996) 517 U.S. 544, 557.) It is a principle that encourages clear rules and standards.

Children subject to the outcomes of dependency proceedings have a fundamental interest in clear rules regarding mootness as this promotes the finality of dependency court orders, decisions that should not be reheard based on an unfounded claim of detriment to the parent. “Judicial economy is a[n] important policy in dependency proceedings, since the lives of children hang in limbo while decisions concerning their futures are being made. Therefore, it is important that time-consuming procedures be relevant to the case.” (Burks-Thomas, *Recent Development: A Closer Look at the Cross-Examination Rights Bestowed in In re Matthew P.: Are All Parents Created Equal?* (2001) 28 W. St. U. L. Rev. 159, 172.)

At a time when counties are still working through virtual appearance and visitation issues while the number of child welfare referrals have remained consistent or grown, courts must preserve the economy of the services counties provide by continuing to require parents claiming to be injured by dependency proceedings show immediate and substantial harm to defeat mootness. County child welfare services are described under Welfare and Institutions Code section 16500, “[t]o provide protective services . . . to children and others subject to exploitation jeopardizing their present or future health, opportunity for normal development or capacity for independence.” (Welf. & Inst. Code, § 19.1, subd. (c).) The State Legislature, in creating California’s system of child welfare services delivered through and by the counties, declared “its intent . . . that all children are entitled to be safe and free from abuse and neglect.” (Welf. & Inst. Code, § 16500.)

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Counties operate under this statutory scheme to provide a vast array of child welfare and family services and resources, which includes 24/7 hotlines for reporting child abuse and neglect, social workers to investigate and manage cases, dependency lawyers from the county counsels' offices, foster and adoption services, substance abuse services, anger management and parenting classes, therapeutic and psychiatric interventions, and more, depending on the unique characteristics of any given referral. County child welfare agencies work tirelessly to provide these services to the thousands of families that enter the dependency system each year, meeting a diverse population's needs through the diligence essential to ensuring California's children are safe and free from abuse and neglect.

Since the start of the pandemic, county agencies have had that diligence tested, and for well over a year have met the unique public health challenges presented by the pandemic while processing hundreds of thousands of referrals for suspected child abuse or neglect. In 2019 alone, 56% of the over 400,000 referrals made in the state to county child protective services met the criteria for an investigation or assessment.

(Williams, *State-level Data for Understanding Child Welfare in the United States* (Oct. 28, 2020) Child Trends

<<https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>> [as of Oct. 17, 2021].)

Estimates place the cost of child welfare services rendered by California counties in 2020 to be over \$4.7 billion, while “the cumulative financial impact to California for the 59,897 substantiated survivors of maltreatment” last year is estimated to be over \$23 billion. (*The Economics of Child Abuse: A Study of California* (April 2021) Safe & Sound

<https://economics.safeandsound.org/static_reports/2021CA_Snapshot.pdf> [as of Oct. 6, 2021].)

The story for counties speaks to these numbers. In the same month the Plaintiff / Respondent Department received the emergency referral for D.P.'s broken rib, it received over 6,000 other referrals. (County of Los Angeles, *Child Welfare Services Data Monthly Fact Sheet* (Feb. 2019) Dept. of Children and Family Services <<https://dcfs.lacounty.gov/wp-content/uploads/2020/02/February-2019.pdf>> [as of Oct. 23, 2021].) On average, each referral involved two minors. (*Ibid.*) Two of the most common reasons for referral in this month included physical abuse (accounting for roughly 18% of the referrals) and general neglect (making up just over 30% of the referrals). (*Ibid.*) Additionally, 20% of the referrals in February were for children under the age of 2. (*Ibid.*)

Beyond judicial economy, straightforward standards regarding efficiency and the appropriate expenditure of government resources caution against expanding the basis for appealing a dependency proceeding. Conclusively in this case, jurisdiction was terminated, and the determinations made regarding the parents' actions did not rise to the level of reporting in the CACI. Neither the dependency court nor the Department "labelled" Appellant a child abuser, the basis for his claim he has been unjustly stigmatized. Appellant would have had to act more egregiously and intentionally than the facts on the record for the Court to make a "child abuse" determination, or to be reported to the CACI.

Rather, it seems Appellant is claiming that being investigated for an allegation of general neglect and appearing in dependency proceedings as a parent is itself unfairly stigmatizing, something the courts simply cannot remedy. The process worked as envisioned by the Legislature, addressing the referral for D.P.'s unexplained broken rib while maintaining a focus on the best interest of the child. The Department investigated the injury, and the dependency court analyzed the findings along with multiple expert opinions.

Ultimately, the court terminated jurisdiction and the Department did not substantiate any finding that would qualify Appellant for reporting to the CACI. Thus, Appellant has not made the requisite showing of harm from any actions by the court or the Department to state a justiciable claim and the Court of Appeal properly dismissed. The existing mootness rule as applied here provides a clear, workable standard that families, counties, and the courts can rely upon.

This clear standard is especially important in cases like this that represent borderline scenarios involving general neglect, an allegation that annually accounts for 46% of the child welfare referrals received statewide. (Kids Data, *Reports of Child Abuse and Neglect, by Type of Maltreatment* (2018) PRB <<https://www.kidsdata.org/topic/4/reported-abuse-type/table#fmt=3&loc=2&tf=108,95,88,84,79&ch=15&sortColumnId=0&sortType=asc>> [as of Oct. 17, 2021].) It is not hard to imagine that counties, in making risk assessments, would reasonably view the change in the standards of justiciability proposed by Appellant as a considerable increase in liability. Investigations into the hundreds of thousands of child welfare referrals for general neglect would be analyzed to determine under what circumstances this new liability attaches, which could in turn force liability to take priority over the needs of minors who depend on counties to conduct thorough investigations.

Counties and the courts must evaluate these cases while keeping the children involved at the center of the focus, especially when it is an infant who, as in D.P.'s situation, cannot communicate the source of its injuries. Appellant would have the focus shift to the harm a child welfare investigation would have on a parent's reputation, almost entirely independent from whether the allegations are ever substantiated.

When almost half of referrals made statewide meet the criteria for investigation and the cost of child abuse and neglect in California is already costing tens of billions of dollars a year, counties and the children that rely on counties to fulfill the statutory duties to investigate these referrals cannot afford such a result.

B. A new mootness rule from this Court could overburden the courts, which are also continuing to face difficulties brought on by the pandemic.

California courts have held for decades that “[a]s a general rule, it is a court’s duty to decide ‘actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.’” (*In re N.S.* (2016) 245 Cal.App.4th 53, 58 quoting *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.) Appellant’s arguments propose a new rule that would allow a parent to assert claims for harm based solely on the parent’s perceived stigma as a result of the proceedings. The record clearly shows Appellant was no longer under the original court’s jurisdiction when his appeal was dismissed and was not harmed in any way that merits relief under the law. His claim that his appeal defeats mootness because he *could* have been harmed carries a strong potential to both overwhelm the courts and disrupt the finality of orders for children in dependency proceedings, an outcome opposite to the doctrines of mootness. Dependency filings have not slowed in recent years, while backlogs in dispositions and judgeship shortfalls persist across the state. The reality is that courts continue to face unprecedented challenges brought on by the COVID-19 pandemic, challenges that require solutions based in judicial economy and efficiency.

These types of considerations naturally gain more significance when such challenges close dependency courtrooms and force families to engage in visitation virtually. While some of the hardest impacts from the pandemic are easing, the numbers of dependency filings have largely stayed consistent; in all but one year over the last five, statewide dependency filings have remained over 40,000 per year.¹ In the same five-year period, the Courts of Appeal saw over 15,000 appeals filed per year, with no appreciable reduction since March 2020.² Meanwhile, recent reports from the Judicial Council of California show judgeship shortfalls in the superior courts across the state, as high as 46% in some counties. (Judicial Council of Cal., *The Need for New Judgeships in the Superior Courts: 2020 Update of the Judicial Needs Assessment* (Nov. 2020) p. 3.) As the Council's report noted:

The public's right to timely access to justice should not be contingent on the resource levels in the county in which they reside or bring their legal disputes. All Californians deserve to have the proper number of judicial officers for the workload in their jurisdiction.

(Ibid.)

¹ Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2021) p. 4; Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2020) p. 3; Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2019) p. xiii; Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2018) p. ii; Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2017) p. ii.

² Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2021) p. 3; Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2020) p. 3; Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2019) p. xiii; Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2018) p. ii; Judicial Council of Cal., *Court Statistics Rep., Statewide Caseload Trends* (2017) p. ii.

Judgeship shortfalls, persisting while caseloads have remained consistent, have led to backlogs that further threaten fundamental rights of access to the courts. At the end of last year, all but five county trial court systems reported experiencing “severe backlogs,” categorized as more than a 25% reduction in the number of dispositions in 2019 compared to the same period in 2020. (Judicial Council of Cal., Budget Branch Committee Materials (Jan. 5, 2021) pp. 11-12.) Overall, the average equaled a 49% reduction, and in many courts, the pandemic significantly deepened delays. (*Ibid.*) Late in 2020, Los Angeles County’s dependency court reported its highest backlog in 14 years. (Loudenback, *Dependency Court Backlog Finds Many Los Angeles Children Still in Limbo* (Dec. 16, 2020) The Imprint <<https://imprintnews.org/child-welfare-2/coronavirus-persistent-dependency-court-backlog-finds-many-los-angeles-children-still-in-limbo/50359>> [as of Oct. 23, 2021].)

This accumulation of pending cases spurred legislative action and in the same year \$50 million was earmarked in the State budget to tackle the problem. (Judicial Council of Cal., Budget Branch Committee Materials (Aug. 13, 2021) p. 8.) While this initial outlay cut the backlog in half down to an approximately 23% reduction, another \$60 million was needed and budgeted in 2021. (*Id.* at p. 9.) These backlogs, and the massive reduction in dispositions experienced by superior courts across the state, represent thousands of cases and litigants still awaiting final decision. For these children, judicial economy and finality represent critical principles that would be rendered meaningless by a new mootness rule that expands the grounds for filing an appeal to any parent who perceives a stigma as the result of dependency proceedings without sufficiently establishing a justiciable claim for relief.

WORD COUNT CERTIFICATION

I certify that this brief and accompanying application contain a total of 3,345 words as indicated by the word count feature of the Microsoft Word computer program used to prepare them.

Dated: November 3, 2021 Respectfully submitted,

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