

PUBLIC POLICY

Best Interests of the Minor

Due Process: Federal Authority

Due Process: State Authority

Due Process: Competing Interests

BEST INTERESTS OF THE MINOR:

“We start with the fundamental premise that the underlying purpose of dependency law is to protect the welfare and best interests of the dependent child. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 597; *Katheryn S. v. Superior Court* (2000) 82 Cal.App.4th 958, 974; *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811; *In re Tabitha G.* (1996) 45 Cal.App.4th 1159, 1165.) Accordingly, the purpose of any dependency hearing is to determine and protect the child’s best interests. (*In re Clara B.* (1993) 20 Cal.App.4th 988, 999, fn. 5.)” (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1424-1425.)

“The statutory scheme is consistent with the focus in dependency law on the child, not the parent. (See *In re Joseph B.* [(1996)] 42 Cal.App.4th [890,] 900.) That is, once dependency jurisdiction is acquired because of the custodial parent’s conduct, the court’s inquiry shifts to a focus on the child’s best interests, albeit with a preference towards parental reunification.” (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425.) There is “[n]o presumption in favor of the natural parent-child relationship” in determining the best interests of the child. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 67.) “The overriding concern of dependency proceedings, however, is not the interest of the extended family but the interest of the minor.” (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855.)

“We have long recognized that providing children expeditious resolutions is a core concern of the entire dependency scheme.” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 847.)

The underlying purpose of dependency law is to protect the best interests of the child and to provide stability and permanency. (*In re Eric H.* (1997) 54 Cal.App.4th 955, 966; *In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104 [protect the minor from harm].) “The objective of the dependency scheme is to protect abused or neglected children . . . and to provide permanent, stable homes if those children cannot be returned home during a prescribed period of time. . . . Although a parent’s interest in the care, custody, and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty,

to protect.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

“In the context of juvenile dependency, weighing the best interests of the dependent child is always the court’s paramount concern.” (*In re Christopher I.* (2003) 106 Cal.App.4th 533, 550.) “the paramount concern in a dependency proceeding is the child’s welfare.” (*In re Kerry O.* (1989) 210 Cal.App.3d 326, 333.)

Dependency courts are “afford[ed] . . . the broadest possible scope of discretion in making decisions that promote the best interest of the minor.” (Welf. & Inst. Code, §§ 300.2, 366.26, subd. (h).) (*Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 758.)

“The state also has an urgent interest in the child’s welfare and shares the parent’s interest in an accurate and just decision.” (*David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1018.)

“Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*. (*Schall v. Martin* (1984) 467 U.S. 253, 265.)

The best interest of the child standard has been termed as “vague” and thus “ ‘judges . . . utilizing [the best interest standard] . . . may find it difficult . . . to avoid decisions resting on subjective values.’ (*Smith v. Organization of Foster Families* (1977) 431 U.S. 816, 835, fn. 36.)” (*Marriage of Harris* (2004) 34 Cal.4th 310, 249 (conc. & dis. opn. of Chin, J).)

“While the child’s ‘best interest’ is ‘an elusive guideline that belies rigid definition,’ obviously overall ‘it’s purpose is to maximize the child’s opportunity to develop into a stable well-established adult.’ (*Adoption of Michelle T.* (1975) 44 Cal.App.3d 699, 704.)” (*Sharon S v. Superior Court* (2003) 31 Cal.4th 417, 437; *In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.)

“Recognizing the difficult problem constantly faced by a court required to determine the best interests of the child in the face of imperfect and unsatisfactory alternatives, it remains impermissible for a court to make that determination based on an assumption.” (*Marriage of Heath* (2004) 124 Cal.App.4th 444, 451.)

“The thrust of the legislative scheme is to encourage parents to correct earlier problems so as to reunite them with their children.” (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1086; also *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 541, fn. 3 [review hearing preserve fundamental fairness and due process; primary concern during reunification stage is returning the minor].) “Family preservation, with the attendant reunification plan and reunification services, is the first priority when child

dependency proceedings are commenced.” (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.)

“After the State has established parental unfitness at the initial proceeding, the court may assume at the dispositional stage that the interests of the child and the natural parents do diverge. (*Santosky v. Kramer* (1982) 455 U.S. 745, 760.)

After terminate reunification services, the focus shifts from the parent’s custodial interests to the child’s need for permanency and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) “In any custody determination, a primary consideration in determining the child’s best interest is the goal of assuring stability and continuity. [Citation.] ‘When custody continues over a significant period, the child’s need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of the child.’ [Citations.] [¶] . . . [¶] After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at that point, ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) “By the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and the child’s interest in a stable and permanent placement is paramount. (*In re Marilyn H.* (1993) 5 Cal.4th [295] at p. 309; *In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195-1196).” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “Because section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Id.* at p. 1350.)

“It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child’s sound development as uncertainty over whether he is to remain in his current ‘home,’ under the care of his parents or foster parents, especially when such uncertainty is prolonged.” (*Lehman v. Lycoming County Children’s Services Agency* (1982) 458 U.S. 502, 513-514; accord, *In re Josiah Z.* (2005) 36 Cal.4th 664, 674.)

The general best interests of the minor cannot override the specific requirements of a statute. (*Los Angeles County DCFS v. Superior Court* (2001) 87 Cal.App.4th 1161, 1168; *In re Jessie G.* (1997) 58 Cal.App.4th 1, 7; *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1165.)

“ ‘Childhood does not wait for the parent to become adequate.’ ” (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610, quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) “Time is of the essence in dependency matters [citations], because childhood does not wait for the parent to become adequate [citation].” (*In re Daniel S.* (2004) 115 Cal.App.4th 903, 913.) “Simply stated, a child cannot be abandoned and then put ‘on hold’ for a parent’s whim to reunite. Children continue to develop, and the Legislature has appropriately determined a child needs a secure and stable home for that development.” (*In re Daniel M.* (1993) 16 Cal.App.4th 878, 885.) “The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it.” (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.) “ ‘A family delayed is a family denied.’ ” (*Arlene M. v. Superior Court* (2004) 121 Cal.App.4th 566, 572.)

Dependency “proceedings are ‘designed not to prosecute a parent but to protect the child.’ ” (*In re Malinda S.* (1990) 51 Cal.3d 368, 384.) The best interests of the child are paramount. [Citations.]” (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673; accord, *Katheryn S. v. Superior Court* (2000) 82 Cal.App.4th 958, 974; *In re Paul E.* (1995) 39 Cal.App.4th 996, 1003-1005; *Los Angeles County DCFS v. Superior Court* (1995) 37 Cal.App.4th 439, 456; see *In re Kieshia E.* (1993) 6 Cal.4th 68, 81; *In re W.O.* (1979) 88 Cal.App.3d 906, 910.) “Dependency proceedings are civil in nature, and are designed to protect children rather than to prosecute parents. [Citations.]” (*In re Amy M.* (1991) 232 Cal.App.3d 849, 864.) “Dependency proceedings are a form of civil case” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

“The delay an appellate reversal causes might be contrary to, rather than in, the child’s best interests.” (*In re Celine R.* (2003) 31 Cal.4th 45, 59.)

A court need not approve an agreement between the parents and CPS. (*In re Lance V.* (2001) 90 Cal.App.4th 668, 675.)

A “child’s wishes are not determinative of his or her best interests.” (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1087.)

DUE PROCESS: FEDERAL AUTHORITY

The “constitutional right of parents and children to live together without governmental interference is clearly established.” (*Mabe v. San Bernardino Co.* (9th Cir. 2001) 237 F.3d 1101, 1107; see also *Wallis v. Spencer* (9th Cir. 2000) 202 F.3d 1126, 1136.) A state-initiated action to terminate parental rights “seeks not merely to infringe” the fundamental liberty interest, “but to end it.” (*Santosky v. Kramer* (1982) 455 U.S. 745, 759.) Accordingly, the possibility that parental rights may be terminated triggers

procedural due process protections under the federal constitution. (*Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 27.)

Fourteenth Amendment due process provides the right for parents to “establish a home and bring up children” and “to control the education of their own.” (*Meyer v. Nebraska* (1923) 262 U.S. 390, 399, 401.)

The Fourteenth Amendment provides parents the right “to direct the upbringing and education of children under their control.” (*Pierce v. Society of Sisters* (1925) 268 U.S. 510, 534-535 [“the child is not a mere creature of the state”]; *Washington v. Glucksberg* (1997) 521 U.S. 702, 719.)

“It is a cardinal with us that the custody, care and nurture of the children reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply or hinder.” (*Prince v. Massachusetts* (1944) 321 U.S. 158, 166 [preventing children of Jehovah’s witnesses from canvassing under child labor laws upheld].)

“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected. (*Parham v. J.R.* (1979) 442 U.S. 584, 602 [“the law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions. More importantly, historically, it has recognized that natural bonds of affection lead parents to act in the best interests of their children.”]; see also *Wisconsin v. Yoder* (1972) 406 U.S. 205, 232.)

The Fourteenth Amendment provides parents “the fundamental liberty interest of natural parents in the care, custody, and management of their child.” (*Santosky v. Kramer* (1982) 455 U.S. 745, 753; accord, *Troxel v. Granville* (2000) 530 U.S. 57, 72 [limit court’s ability to order grandparent visitation over parent’s objection]; *Stanley v. Illinois* (1972) 405 U.S. 645, 651; *In re Lucero L.* (2000) 22 Cal.4th 1227, 1247 (lead opn. of Mosk, J.); *Herbst v. Swan* (2002) 12 Cal.App.4th 813, 820 [sibling visitation under the Family Code]; *Kyle O. v. Donald R.* (2000) 85 Cal.App.4th 848 [grandparent visitation]; *Punsly v. Ho* (2001) 87 Cal.App.4th 1099 [grandparent visitation].)

“[A] parent’s desire for and right to ‘[A] companionship, care, custody, and management of his or her children’ is an important interest that ‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’ *Stanley v. Illinois*, [(1982)] 405 U.S. 645, 651. Here the State has sought not simply to infringe upon that interest, but to end it. If the State prevails, it will have worked a unique kind of

deprivation. [Citation.] A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.” (*Lassiter v. Dept. of Social Services* (1981) 452 U.S. 18, 27.)

Prior to terminating parental rights, parent must be found unfit by clear and convincing evidence. (*Santosky v. Kramer* (1982) 455 U.S. 745, 768-770.)

The government may restrict a parent’s control over their children. (See, e.g., *Runyon v. McCrary* (1976) 427 U.S. 160, 177 [there is no parental right to educate children in private segregated schools]; see *Norwood v. Harrison* (1973) 413 U.S. 455, 461-462; *Wisconsin v. Yoder* (1972) 406 U.S. 205, 239 (conc. opn. of White, J. [parents may not replace the state educational requirements for their own idiosyncratic views of what a child should learn].)

DUE PROCESS: STATE AUTHORITY

“The critical importance in California to the right to parents have been reaffirmed and reaffirmed. [Citations.] It only gives way upon a showing of parental unfitness, detrimental to the child’s welfare.” (*Marriage of Jenkins* (1981) 116 Cal.App.3d 767, 774; *In re B. G.* (1974) 11 Cal.3d 679, 687 [constitution requires (potential) harm in order to justify government interference with child rearing].)

“[T]he interest of a parent in the companionship, care, custody, and management of his children is a compelling one, ranked among the most basic of civil rights.” (*In re B. G.* (1974) 11 Cal.3d 679, 688-689; *In re Marilyn H.* (1993) 5 Cal.4th 295, 306.)

“Parenting is a fundamental right, and accordingly, is disturbed only in extreme cases of persons acting in a fashion incompatible with parenthood” (*In re Angelia P.* (1981) 28 Cal.3d 908, 916; *In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438; *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 59.)

“The right to parents to raise their children is so fundamental that termination of that right by the courts would be viewed as a drastic remedy to be applied only in extreme cases.” (*In re Victoria M.* (1989) 207 Cal.App.3d 1317, 1326; *In re Kristin W.* (1990) 222 Cal.App.3d 234, 252; *In re David D.* (1994) 28 Cal.App.4th 941, 951.)

“[A] cardinal rule of our society that the custody, care, and nurture of a child resides first in the parents rather than in a public agency . . . “[T]he relationship of . . . natural parents . . . [and] . . . children is a vital human relationship which has far-reaching implications for the growth and development of the child. [Citation.] . . . [T]he involuntary termination of that relationship by state action must be viewed as a drastic remedy which should be resorted to only in the extreme cases of neglect or

abandonment.” [Citations.]” (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438, quoting *In re Jeanette S.* (1979) 94 Cal.App.3d 52, 59.) “Impairment of the fundamental right to parent must comport with the requirement of procedural due process.” (*In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1129.)

“While not equivalent to the interest of a criminal defendant in his or her liberty interest (*In re Sade C.* (1996) 13 Cal.4th 952, 982), the right to conceive and raise one’s children requires greater protection than the interests of civil litigants seeking monetary damages. [Citations.]” (*Michael P. v. Superior Court (Orange County Sheriff’s Dept.)* (2001) 92 Cal.App.4th 1036, 1045.) A Parent is “an involuntary participant” in the dependency proceeding. (*Ibid.*)

Due process requirements under the Family Code the same as under the Welfare and Institutions Code. (*In re Sara D.* (2001) 87 Cal.App.4th 667, 669.)

“Although parents in dependency proceedings are not prosecuted as defendants, petitions often contain allegations of criminal activity,” and dependency proceedings are “ ‘adversarial in nature.’ [Citation.]” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1662.) And “proceedings, particularly when termination of parental rights may result, are accusatory in nature as to the parent.” (*In re Charles T.* (2002) 102 Cal.App.4th 869, 875.)

In criminal and dependency proceedings, defendant and parent both face deprivation of a fundamental liberty interest. (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 556.)

“[A] noncustodial grandparent of dependents of the juvenile court . . . has no substantive due process right to free association with the minor, or to maintain a relationship with them.” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1508.)

DUE PROCESS: COMPETING INTERESTS

“The right to adopt a child and the right of a person to be adopted as the child of another, are wholly statutory.” (*Estate of Sharon* (1918) 179 Cal. 447, 454.)

“ ‘Although a parent’s interest in the care, custody, and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty to protect.’ (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) The dependency statutes fulfill this duty by authorizing judicial intervention to protect children who are at substantial risk of physical or emotional harm. (*In re Joseph B.*

(1996) 42 Cal.App.4th 890, 900.) The state’s compelling interest in protection requires the court to focus on the child’s placement and well-being, rather than on a parent’s custody challenge [even at the dispositional hearing]. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180.)” (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1423.)

Family preservation is the first priority during reunification services; afterwards, the minor’s interests for permanency takes precedence. (*In re Marilyn H.* (1993) 5 Cal.4th 385, 309; *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256; *In re Malinda S.* (1990) 51 Cal.3d 368, 382-383, fn. 17; *In re Janee* (1999) 74 Cal.App.4th 198; *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787; but see *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1176 [must balance minor’s interests even at jurisdictional hearing].)

The minor has due process right to stability and permanency. (See *In re Sade C.* (1996) 13 Cal.4th 952, 987 [liberty interest in normal family home or somewhere stable]; *In re Jasmon O.* (1994) 8 Cal.4th 398, 419-420 [stable and permanent location in a functional family unit]; *In re Marilyn H.* (1993) 5 Cal.4th 385, 306; *In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1504 [“the rights of children in their family relationships are at least as fundamental and compelling as those of their parents”].) But a minor does not have a federal due process right to stable placement; rather, there is a strong state interest in such. (*In re Vincent M.* (2007) 150 Cal.App.4th 1247, 1265.)

Minors also have a fundamental interest in maintaining a relationship with their natural parents. (*Levy v. Louisiana* (1968) 391 U.S. 68, 71-72.) United States Supreme Court has not ruled whether minors have a liberty interest in preserving established familial or family-like bonds. (*Michael H. v. Gerald G.* (1989) 491 U.S. 110, 130.) “The government’s interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children’s interests in . . . the lawfully exercised authority of their parents.” (*Calabretta v. Floyd* (9th Cir. 1999) 189 F.3d 808, 820.)

The state has an urgent interest in the minor’s welfare and shares the parent’s interest in an accurate and just decision. (*Lassiter v. DSS* (1981) 452 U.S. 18, 27; *In re Lucero L.* (2000) 22 Cal.4th 1227 [government’s interest to stop the abuse]; *In re Sade C.* (1996) 13 Cal.4th 952, 989 [and to decrease cost and finality]; *In re Malinda S.* (1990) 51 Cal.3d 368, 382-383 [and to fiscal and administrative efficiency]; *In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1259, fn. 10 [the state’s shared interest in accurate and just decision requires reversal when there is error], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *In re DeJohn B.* (2000) 84 Cal.App.4th 100, 106 [same]; *David B. v. Superior Court* (1993) 21 Cal.App.4th 1010, 1018-1019 [same].)

The court must balance private interests, government interests, risk of error, cost

of different system. (*Matthews v. Eldridge* (1976) 424 U.S. 319, 355; *Gannett Co. v. DePasquale* (1979) 443 U.S. 368, 383 [public interest in administrative and justice protected by the parties]; *In re Lucero L.* (2000) 22 Cal.4th 1227 [interest in presenting a defense against government's interest in prevented harm]; *In re Sade C.* (1996) 13 Cal.4th 952, 987; *In re Malinda S.* (1990) 51 Cal.3d 368, 383 [i.e., interest in giving that procedural right]; cf. *People v. Holt* (1997) 15 Cal.4th 619, 644 ["the fact that a particular procedure might enhance reliability does not make it one that is constitutional mandatory."].)

"[I]t is well established that a prospective adoptive parent with whom a child has been placed for adoption has a liberty interest in the continued custody." (*Adoption of Baby Girl B.* (1999) 74 Cal.App.4th 43, 51.)

A due process violation exists when (1) there is a fundamental undermining of the statutory protections and (2) not just trial error but abrogation of the statutory right. (*In re Janee* (1999) 74 Cal.App.4th 148; *In re Cathina W.* (1998) 68 Cal.App.4th 716, 722-724.)

"Although each stage in the dependency proceeding serves a particular purpose, all stages are part of an overall proceeding and an ongoing case." (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1507-1508.)