IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE D.P., A Person Coming Under the Juvenile Court Law	No. S267429
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent,	Court of Appeal No. B301135
v.	Los Angeles No. 19CCJP00973
T.P. Objector and Appellant.	

APPELLANT T.P.'S CONSOLIDATED ANSWER TO AMICUS BRIEFS

After the Unpublished Decision by the Court of Appeal,
Second District, Division Five,
Filed February 10, 2020

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Under Appointment By the Supreme Court of California Under the California Appellate Project Los Angeles's Independent Case System

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DEPARTMENT OF CHILDREN	)	B301135
AND FAMILY SERVICES,	)	
Plaintiff and Respondent,	)	Los Angeles No.
	)	19CCJP00973
v.	)	Appellant's Consolidated
	)	
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Introduction

Pursuant to California Rules of Court[1], rules 8.200(c)(6) and 8.520(f)(7), Appellant, father T.P., respectfully submits this Consolidated Answer Brief to the two amicus briefs filed in support of Respondent: (1) the Amicus Brief filed on behalf of the California State Association of Counties ("The Counties Br."); and (2) the Amicus Brief filed by the Law Office of Tate Lounsberry ("LLO Br."). Appellant joins in the arguments raised in the three amicus briefs filed in support of Appellant.

In this Answer, Appellant will respond only to those points addressing the legal issues on review which require clarification or further explanation. To the extent any points made in the Amicus Briefs filed by the Counties and the Law Office of Tate

[1] All rule references are to the California Rules of Court unless otherwise noted

Lounsberry are not addressed herein, the failure to respond should not be considered a concession of those points.

Argument

I.

Appellant Joins in the Amicus Brief Filed By the American Civil Liberties Union of Southern California

Pursuant to rules 8.200(c)(6) and 8.520(f)(7), Appellant joins in adopts by this reference the amicus brief filed by the American Civil Liberties Union of Southern California. ("ACLU Br.")

II.

Appellant Joins in the Amicus Brief filed by Legal Services For Prisoners With Children, Los Angeles Dependency Lawyers, East Bay Family Defenders, and East Bay Community Center

Pursuant to rules 8.200(c)(6) and 8.520(f)(7), Appellant joins in adopts by this reference the amicus brief filed by the Legal Services For Prisoners With Children, Los Angeles Dependency Lawyers, East Bay Family Defenders, and East Bay Community Center. ("Legal Services Br.")

III.

Appellant Joins in the Amicus Brief filed by Los Angeles Dependency Lawyers. Law Office of Emily Berger; Thirteen Appellate Dependency Attorneys

Pursuant to rules 8.200(c)(6) and 8.520(f)(7), Appellant joins in adopts by this reference the amicus brief filed by the Los Angeles Dependency Lawyers, Law Office of Emily Berger; and Thirteen Appellate Dependency Attorneys. ("Dependency Lawyers Br.")

IV.
The Argument Raised By The California State Association Of Counties Fails To Articulate A Government Interest That Outweighs The Due Process Interests Raised by Appellant

1. The Counties Fiscal Burden Interest Does Not Outweigh The Need For Accurate And Just Decisions In Dependency Cases

The Counties' Brief asserts that permitting Appellant's claims to defeat mootness would have "strong potential to waste resources" and could "burden court resources" impacted during the COVID-19 pandemic." (The Counties Br. at p. 5.) While concern for fiscal burdens is a valid government interest, the Counties' argument that these concerns outweigh Appellant's interest in a fair and just resolution of his appeal is unavailing.

Under the California Constitution, the extent to which procedural due process is available depends on a weighing of private and governmental interests involved. Government interests include "the fiscal and administrative burdens that additional or substitute procedural requirements would entail." (*Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, 390–391, quoted in *Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1071–1072.) In the context of child welfare proceedings, the Supreme Court has noted that Respondent has two interests at stake when dealing with state interference in parental rights: "[A] *parens patriae* interest in preserving and promoting the welfare of the child and a fiscal and administrative

interest in reducing the cost and burden of such proceedings." (*Santosky v. Kramer* (1982) 455 U.S. 745, 766–767 [102 S.Ct. 1388, 1401–1402, 71 L.Ed.2d 599].) Those two interests can at times clash or join.

The Counties argue that conserving fiscal resources outweighs concern for any possible due process violations because there are numerous child abuse referrals made to the county. (The Counties Br., at pp. 8-9.) The Counties also claim that "the appropriate expenditure of government resources caution against expanding the basis for appealing a dependency proceedings." (The Counties Br. at p. 9.) In order to assert this fiscal burden interest, the Counties are required to show the fiscal and administrative burden that the additional procedural requirement would entail. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18.) In this case, the burden for the Counties is the preparation of a merits brief rather than a motion to dismiss. The Counties' concern as to "expanding a basis" for appealing dependency proceedings is inaccurate as the issues in this case do not change what constitutes a reviewable order in a section 300 proceeding. (WIC, § 395 (a)(1); Cal. Rules of Court, Rule 8.403 (b)(1).)[2]

The Counties have designated appellate counsel for dependency appeals and have not articulated how granting appellant's relief would impose a financial burden on county

[2] All statutory references are to the Welfare and Institutions Code (WIC) unless otherwise noted.

counsel. The Counties have also not shown any nexus to the investigative duties of child welfare services which are handled by dependency investigators and case social workers. Speculative fiscal concerns as raised by the Counties should not deprive an affected person's right to have to a meaningful hearing. (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 337–357; *Haas v. County of Sam Bernardino* (2002) 27 Cal.4th 1017, 1031.)

The Counties argument also ignores the second interest mentioned in *Santosky v. Kramer,* to promote the welfare of the child. The Counties opines that the fiscal burden interest aligns with an interest in not disrupting the finality of orders for children. (The Counties Br. at pp. 5, 11.) The Counties are wrong as both Respondent, children, and parents are not served by affirming erroneous juvenile court orders. "That which is unjust can really profit no one; that which is just can really harm no one." (American Quotations 306 (Gorton Carruth & Eugene Ehrlich eds., Wings Books 1992) (quoting Henry George, The Irish Land Question (1884).)

"[T]he state also has an urgent interest in child 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; *Lassiter v. Department of Social Services of Durham County, N. C.* (1981) 452 U.S. 18, 31–32 [101 S.Ct. 2153, 2161–2162, 68 L.Ed.2d 640].) Respondent, children, and parents share the same interest not to affirm erroneous orders. In making the argument

that "finality" for children should trump a parent's due process rights, the Counties incorrectly presumes that the child's and parents interests are not aligned. (See *Santosky v. Kramer*, *supra,* 455 U.S. at p. 760 [stating that at the fact-finding hearing, the state cannot presume that a child and parent are adversaries and that the interests of the child and parent do not coincide].) Thus, any interest in "finality" does not include affirming erroneous decisions for expediency.

Fiscal and budgetary concerns are an important government interest but not more important than the state's *parens patriae* interest in ensuring accurate judicial decisions based on correct interpretations of the law. The assurance of due process for an unjustly accused parent outweighs any potential costs to the Counties in the appellate process.

2. The Counties Erroneously Argue that Appellant Was Investigated for "General Neglect"

The Counties argue "Appellant is claiming that being investigated for an allegation of general neglect and appearing in dependency proceedings as a parent is itself unfairly stigmatizing." (The Counties Br. at p. 9.) In making the argument this case was just a scenario involving general neglect, the Counties ignores that "general neglect" by definition does not include a case, such as this one, where there is physical injury to the child. (Penal Code, § 11165.5.) The Counties also claim that a CACI referral is not relevant in this case because Appellant

would have had to act more egregiously and intentionally than the facts on record for the court to make a child abuse determination. (The Counties Br. at p. 9.) In making this argument the Counties are talking out of both sides of their mouth.

On one side, the Counties want to assure this Court that the circumstances of this case do not qualify Appellant for reporting to the CACI. (The Counties Br. at p. 10.) On the other side, based on the Department's substantiated child abuse findings, Respondent filed a petition in this matter under section 300, subdivision (a), which alleged serious physical harm and at the September 20, 2019 adjudication hearing, Respondent urged the juvenile court to sustain count A-1, under subdivision (a). (1 RT 94, 97; 1 CT 4.)

Respondent has claimed that the issue of a CACI report was not relevant in this matter because "a child welfare agency makes a CACI report as soon as a social worker substantiates an incident of child abuse or severe neglect; it does not wait for a sustained petition." (DCFS Letter, dated 11/19/2020.) If that is the case, then the child welfare agency would have been mandated to report this case, as the Department substantiated findings under section 300, subdivision (a), for serious physical harm. (Penal Code, § 11169 (a).) The Counties argument that "the Department did not substantiate any finding that would qualify Appellant for reporting to the CACI" is not consistent with Respondent's actions. (The Counties Br. at p. 10.) A case

involving serious physical harm as alleged by DCFS is not a "mere borderline scenario involving general neglect" which is how the Counties now attempt to describe this case. (The Counties Br. at p. 10.)

The takeaway from Respondent's inconsistent positions provides another basis as to why a merits review of this appeal is warranted. It cannot be assumed that had Respondent made the Counties' argument at the September 20, 2019 adjudication hearing that this case was a "mere borderline scenario" rather than arguing it was a case of serious physical harm, that the juvenile court would have made the same jurisdictional findings. The Counties are basically arguing that Respondent no longer agrees with the results of the Dependency Investigator's findings. This inconsistency further demonstrates that the juvenile court's jurisdictional findings should not be affirmed.

It is also notable that the Counties' focus on the substance of the jurisdictional findings avoids answering the topics raised by this Court. However, if Respondent really wants to litigate what was substantiated and sustained in this case, that is all the more reason for this Court to order a merits review of Appellant's appeal on remand to the Court of Appeal. The Counties' argument lends support to Amici Dependency Lawyers argument that courts should not impliedly affirm jurisdictional findings that have not undergone appellate review. (Dependency Lawyers Br. at p. 15.)

3. The Counties Argument Regarding "New Liability" Has No Nexus To the Issues In This Case

The Counties argue the existing mootness rule must be maintained because a change in the standards of justiciability would cause a "considerable increase in liability" and that "this new liability" would "take priority over the needs of minors who depend on counties to conduct thorough investigations." (The Counties Br. at p. 10.) It is unclear what this "new liability" entails and what nexus it has to the issues in this case. Appellant is merely asking for appellate review of the jurisdictional findings made in his case. The Counties do not explain how the appellate review sought in this case would impose a "new liability" on the county or change the counties' duty to serve minors at risk of abuse or neglect.

To the extent that the Counties are arguing that judicial accountability through appellate review would inhibit social workers from filing section 300 petitions for "borderline scenarios" that would not necessarily be a harm. The filing of "borderline scenario" petitions must be considered in the context of the disproportional reporting of children from low-income and ethnic minority families for child abuse and neglect to children protective services. (ACLU Br. at pp. 39-40; See Candra Bullock, *Low-Income Parents Victimized by Child Protective Services*, 11 Am. U. J. Gender Soc. Pol'y & L. 1023, 1024-1025 (2003) ["The large number of low-income parents reported for child abuse and neglect results in the unfortunate separation of many low-income

and minority families, making both children and parents victims of the United States' child welfare system"].)

4. *The Counties Speculation That A "New Mootness Rule" Would Overburden Courts Is Without Merit*

The Counties argue that Appellant seeks for this Court to create a "new mootness rule" based on a "parent's perceived stigma" as a result of a juvenile court's jurisdictional findings. (Counties Amicus at p. 11.) In making this argument, the Counties ignore that a state determination of child abuse is not merely a "perceived" stigma. The Counties imply that all of the burden is on the parent to show they have been stigmatized rather than providing any evidence of the reverse, namely that a dependency court's jurisdiction does not stigmatize parents where the stigma of child abuse is well acknowledged.

The consequences of the juvenile court's jurisdictional findings go beyond the potential for inclusion in the CACI and are not merely "perceived" or speculative. They include a substantiated child abuse referral in the DCFS county-wide database systems, CWS/CMS (Child Welfare Services/ Case Management System) and "WCMIS (Welfare Case Management Identification and Indexing System). (Dependency Lawyers Br. at pp. 18-19.) Even an inconclusive report of child abuse listed in the CWS/CMS database satisfies the "stigma-plus" test, as the information therein is disseminated to multiple agencies and amounts to a serious invasion of privacy without an adequate

opportunity for the subject to rebut that evidence. (*Castillo v. County of Los Angeles* (C.D. Cal. 2013) 959 F.Supp.2d 1255, 1262.)

The impact also goes beyond preclusion from types of employment, kinship foster care, or adoption. A state determination of abuse or neglect impacts a parents' ability to participate in their children's lives. As pointed out by the ACLU, a juvenile court's determination of abuse or neglect affects a parent's right to family association. (ACLU Br. at pp. 26-27.) It can preclude a parent from volunteering at a school or extracurricular activities. Even if the parents might not be officially rejected from completing a background check to participate in these type of activities, the fear their child welfare history will be disclosed to people they know can prevent them from even applying.

A child welfare history can also impact custody and visitation determinations in family law proceedings, and such information can be made available to mandated reporters such as doctors, law enforcement, judicial officers and court personnel. As such the stigma of the state determination of child abuse or neglect impacts the entire family unit. (Amanda S. Sen, Stephanie K. Glaberson, Aubrey Rose, *Inadequate Protection: Examining the Due Process Rights Of Individuals In Child Abuse And Neglect Registries*, 77 Wash.& Lee. L.Rev. 857, 868, 881 (2020).)

Appellant seeks only the opportunity for appellate review to correct the information about himself in the system. The right to appeal is so ingrained in the interests of justice that even a deceased criminal defendant will not stand convicted without a resolution of the merits of his appeal. *(See United States v. Oberlin* (9th Cir. 1983) 718 F.2d 894, 895 [under rule of abatement, *ab initio* "death pending appeal of a criminal conviction abates not only the appeal but all proceedings in the prosecution from its inception"]; *U.S. v. Rich* (9th Cir. 2010) 603 F.3d 722, 724.) The relief of appellate review sought in this case provides a due process protection of the right to raise one's children without government interference which is a guaranteed liberty interest of the Fourteenth Amendment. (*Rogers v. County of San Joaquin* (9th Cir. 2007) 487 F.3d 1288, 1294; *Meyer v. Nebraska* (1923) 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042; *Lassiter v. Dep't of Soc. Servs*. (1981) 452 U.S. 18, 27, 101 S.Ct. 2153, 2159–2160, 68 L.Ed.2d 64.)

The Counties concern with case backlogs does not provide a basis to deprive parents of the ability to challenge a state determination of child abuse or neglect since. The Counties admit that "[t]he 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." (The Counties Br. at p. 12.) The danger in the Counties' position to preclude appellate review for Appellant is that appeals from cases where dependency jurisdiction is of short duration become increasingly immunized

from judicial review. County Counsel frequently encourage this result by seeking filing extensions for an appeal when there is a pending recommendation by DCFS to terminate dependency jurisdiction at the next review hearing. (*Already, LLC v. Nike, Inc. (*2013) 568 U.S. 85, 91, 133 S.Ct. 721, 184 L.Ed.2d 553 [A party "cannot automatically moot a case simply by ending its unlawful conduct once sued," else it "could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where [it] left off, repeating this cycle until [it] achieves all [its] unlawful ends".])

The insulation from judicial review of a whole category of similar claims, where the assumption of dependency jurisdiction results in a short term dependency, goes against sound judicial administration.

V.
The Amici Arguments By The Lounsberry Law Office Address Issues Not Raised In This Case

1. LLO's Arguments Regarding the Definitions of Child Abuse And Neglect Used in CACI Proceedings Are Policy Arguments Not Discussed In the Parties' Briefs

LLO's request for legal guidance that the Penal Code definitions of child abuse and neglect apply in CACI grievance proceedings is beyond the issues raised in this case. (LLO Br. at p. 14.) "Amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not

be considered." (*Pratt v. Coast Trucking, Inc.* (1964) 228 Cal.App.2d 139, 143, quoting *Eggert v. Pacific States S. & L. Co.* (1943) 57 Cal.App.2d 239, 251.) "Amicus curiae may not launch out upon a juridical expedition of its own unrelated to the actual appellate record." (*Ibid*; see also *Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 852 [same]; *California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1274.)

2. LLO's Argument That Mootness Applies To Dependency Appeals As To Future CACI Placements Because Dependency Proceedings And CACI Hearings Have Different Purposes Fails To Recognize That Child Abuse Allegations Referred To CACI Can Also Give Rise To The Filing Of A Section 300 Petition

LLO argues that a dependency court's jurisdictional findings relate to the minor, not to the parent to the effect that CACI-related issues are not litigated in dependency proceedings. (LLO Br., at pp. 15-16.) LLO's argument does not seem to understand what this case is about. To the extent that LLO argues dependency hearings do not adjudicate whether a parent committed acts of child abuse or severe neglect, that argument is incorrect. (LLO Br. at p. 15.)

Dependency proceedings serve a purpose to protect children who have been seriously abused, neglected or abandoned by their parents. (§ 300.2; *In re Chantal S.* (1996) 13 Cal.4th 196, 207; see also *In re Kaylee H.* (2012) 205 Cal.App.4th 92, 104.) That

purpose does not change that a juvenile court's jurisdictional finding determines whether a parent or guardian abused or neglected their child, or is unable or unwilling to protect their child from abuse or neglect. (*Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 84.)

If this Court is inclined to consider LLO's policy arguments it should be noted that the subject matter of CACI grievance proceeding and jurisdictional allegations in a dependency case are not mutually exclusive and often overlap. (LLO Br. at pp. 14-15.) A child abuse report that is substantiated by DCFS can be referred to the Department of Justice for listing in the CACI and give rise to DCFS filing a section 300 petition to establish dependency jurisdiction. (Pen. Code, § 11165.12, subd. (b).) While not all child abuse reports that result in dependency petitions result in a CACI referral, it is clear that some can and do.

In arguing that mootness applies to cases where there may be a future CACI listing, LLO claims that an allegation that results in a referral to the CACI is never "pending" before the dependency court. (LLO Br. at p. 17.) That may be the case when the aggrieved party in the CACI proceeding is not the parent or guardian of the abused child but many parents in dependency proceedings find themselves subject to a listing in the CACI. A parent facing a future CACI listing may be a party to dependency proceedings due to the same factual situation even if the allegations are worded differently. LLO avoids this point in claiming that "no statute authorizes a CWS agency to place a person's name on the CACI on the basis of a dependency court finding." (LLO Br

at p. 17.) This argument misses the relevant issue that a juvenile court's jurisdictional finding can preclude a parent from the ability to seek a CACI grievance hearing. (Pen. Code §1169, subd.(e).) LLO also ignores that the dismissal of a dependency petition changes a "substantiated" referral to an unfounded referral which could eliminate the basis for a CACI referral. (See *Endy v. City of Los Angeles* (9th Cir. 2020) 975 F.3d 757, 763 [Juvenile court's dismissal of dependency petition caused DCFS to update its database to indicate the allegations were unfounded].)

It can be assumed parents seeking a CACI grievance hearing share an interest in the dismissal of allegations sustained against them in a dependency petition. An appeal from a juvenile court's jurisdictional finding and a CACI grievance hearing share the same purpose to clear a parent's name from allegations of child abuse. Thus, there is no rationale for LLO's argument as to the application of mootness in this case. (LLO Br. at p. 17-18.)

Conclusion

A state determination of child abuse impacts a parent beyond the duration of the dependency proceedings, even when the children are returned to the parents' care. This impact remains even when Respondent no longer supports the facts as alleged in the petition, as in this case. Parents deserve the right to have a finding of child abuse and/or neglect erased, especially where Respondent has asserted inconsistent positions. To accept the reasoning of the Counties, would be to disregard for the sake

of expediency Respondent's shared interest in just and accurate state determinations of abuse and neglect. While the reasoning of LLO, would disregard that the impact of a state determination of child abuse or neglect goes beyond potential issue preclusion for a CACI grievance. The fundamental right to family integrity tips the scales of due process to allow unjustly accused parents the right to clear their name. Appellant should be given the opportunity to challenge the juvenile court's jurisdictional finding in order to have it reversed and remanded with directions to dismiss the petition.

Date: December 28, 2021

Respectfully submitted,

Megan Turkat Schirn

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Certificate of Compliance

Counsel of record hereby certifies, the enclosed brief complies with the form requirements set by the California Rules of Court, rule 8.204(b), and has been produced using 13-point Century Schoolbook. The text of this brief includes 25 pages and 4,921 words, excluding the cover, tables, signature block and this certificate, according to the word count feature of the computer program used to prepare this brief.

Date: December 28, 2021

Respectfully submitted,

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In Re: *D.P.*
Supreme Court No. S67429
Court of Appeal No. B301135
Juv. Case No. 19CCJP00973

Declaration of Service

I, the undersigned, declare that I am over 18 years of age, residing or employed in the County of Los Angeles, and am not a party to the instant action. My business address is listed above, and my e-service address is *schirn@sbcglobal.net*. On July 22, 2021, I served the attached APPELLANT'S CONSOLIDATED ANSWER TO AMICUS BRIEFS by placing true copies in a sealed envelope, with the correct postage, and depositing them in the United States Postal Service, to each of the following persons at the following addresses:

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On December 29, 2021, I also transmitted a PDF version of this document via email, to each of the following using the email address indicated:

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Megan Turkat Schirn

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE D.P.**
Case Number: **S267429**
Lower Court Case Number: **B301135**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12/28/2021

Date

/s/megan turkat schirn

Signature

turkat schirn, megan (169044)

Last Name, First Name (PNum)

Megan Turkat Schirn

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