SUPREME COURT NO. S187587

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of ETHAN C., et al., Persons Coming Under Juvenile Court Law.	
WILLIAM C., Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, Respondent.	Court of Appeal 2d No. B219894 LASC No. CK78508
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party In Interest.	

ANSWER TO PETITION FOR REVIEW

From the Decision of the Court of Appeal, Second Appellate District, Division
On Appeal from the Judgment of the Superior Court for the County of Los Angeles,
Juvenile Division, Honorable Sherri Sobel, Referee Presiding

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INTRODUCTION

William C. ("petitioner"), petitions this court for a review of the Court of Appeal's opinion holding that his children were described by Welfare and Institutions Code section 300, subdivision (f). The holding was based on a pattern of neglect, culminating in his failure to secure the children's sister, Valerie, in a car seat, which directly resulted in Valerie's death. Petitioner claims the juvenile court and the Court of Appeal should have applied the concept of criminal negligence to its analysis of the case, i.e, that Valerie's death had to have been found to be caused by a "reckless, aggravated or flagrantly negligent act" and have been a "natural and probable result." Nothing could be further from the truth. The California Legislature specifically revised section 300, subdivision (f), with the express purpose of allowing a juvenile court to find jurisdiction under that subdivision based on simple negligence.

Petitioner further claims there is a conflict in the law regarding whether there must exist a "present risk of harm" to the living children before a court can find jurisdiction under section 300, subdivision (f). Petitioner is wrong, first, because the face of the statute does not require this. He also is mistaken because the only case that deals with the same subject agrees with the Court of Appeal in this case. Finally, the only other case cited by petitioner as conflicting concerns a related but completely

different topic, and actually provides some support to the decision of the Court of Appeal. Therefore, the Petition for Review should be denied.

STATEMENT OF THE CASE AND THE FACTS

For purposes of this answer to appellant's petition for review, respondent adopts the statement of facts in the Court of Appeal's decision. (Petition for Review ["Petition"], Exhibit 1, pp. 2-8.)

ARGUMENT

I. THIS CASE DOES NOT PRESENT GROUNDS FOR REVIEW UNDER CALIFORNIA RULES OF COURT, RULE 8.500(b)(1).

Under California Rules of Court, rule 8.500(b)(1), this Court may grant review of a decision of the Court of Appeal "when necessary to secure uniformity of decision or to settle an important question of law." Those circumstances do not exist in the present case.

In its decision in this case, the Court of Appeal held that the plain language of section 300, subdivision (f), allowed the juvenile court to find jurisdiction in the present case without a finding that the living children were currently suffering harm or at risk of harm. In doing so, the Court of Appeal noted it was in agreement with the recently published case of *In re A.M.* (2010) 187 Cal.App.4th 1380,[1] which had a similar holding.

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[1] A Petition for Review in *In re A.M.* was filed with this Court on October 1, 2010 and remains pending, as Supreme Court Case No. S186493.

In fact, the only case petitioner alleges holds slightly to the contrary, did not even address the same issue, as petitioner himself acknowledges. (Petition, p. 21.) *Mardardo F. v. Superior Court* (2008) 164 Cal.App.4th 481 ("*Mardardo*") concerned, not whether a child was described by section 300, subdivision (f), but whether a parent should receive reunification services under section 361.5, subdivision (b)(4), having *already been found to have caused the death of a child* under section 300, subdivision (f).

Mardardo was only marginally on point. In large part, the Court of Appeal in *Mardardo* rejected the idea that denial of services could only occur when the deceased child was an actual child of the parent, finding the language "another child" could also apply to a non-biological child. (*Id.* at p. 481.) In addition, the Court of Appeal in *Mardardo* specifically held that section 361.5, subdivision (b)(4), involving the denial of reunification services where a parent has caused the death of a child, should be interpreted broadly, not narrowly. (*Id.* at p. 491.) If anything, this supports, rather than undermines, the juvenile court's application of section 300, subdivision (f), to the facts of this case. Therefore, petitioner has not shown grounds for this Court to review the decision of the Court of Appeal and the Petition should be denied.

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II. SECTION 300, SUBDIVISION (f), DOES NOT REQUIRE A FINDING OF CRIMINAL NEGLIGENCE BASED ON ANY INTERPRETATION OF THAT TERM.

Petitioner claims Ethan and Jesus should not have been found to be children described by section 300, subdivision (f), alleging that subdivision should require a finding equivalent to criminal negligence. (Petition, pp. 7-12.) He further claims the absence of the words "knew or reasonably should have known" is evidence the Legislature intended to apply a criminal standard to this subdivision. (Petition, p. 10.) Petitioner is wrong.

Statutory interpretation "'turns first to the words themselves for the answer.' [Citation.] [Courts] are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citation.]" (*Moyer v. Worker's Compensation Appeals Board* (1973) 10 Cal.3d 222, 230.) The plain language of section 300, subdivision (f), does not speak of negligence or neglect from the standpoint of "knew or reasonably should have known," in such a way to apply only to a person being charged with knowing what another person is doing or might be capable of doing. Section 300, subdivision (f), is far more simple. It refers directly to the actions of the parent. For a child to come under section 300, subdivision (f), it is only necessary the court find that the parent or guardian caused the death of a child through abuse or neglect. (§ 300, subd. (f) ["the child's parent or guardian caused the death of another child through abuse or neglect."])

Furthermore, petitioner appears to have misread section 300, subdivision (j), claiming it would be duplicative of section 300, subdivision (f), unless section 300, subdivision (f), is found to require criminal negligence. (Petition, pp. 10-11.) Section 300, subdivision (j), specifically does not apply to findings under section 300, subdivision (f).[2]

Petitioner further has misconstrued the legislative history of section 300, subdivision (f). (Petition, pp. 9-12.) In a portion of the record ignored by petitioner, the Senate Judiciary Committee Analysis specifically states, "The impact of this provision is to lower the standard of proof by which the parent's cause of the other child's death is found, and to require the juvenile court to make the determination as to whether the parent caused the other child's death. A criminal conviction requires proof beyond a reasonable doubt, while the standard of proof in a civil action is mere preponderance." (Senate Judiciary Committee, History and Analysis of AB 2679, Page o, section 2-E.) Thus, the Legislature was fully aware that the proposed change would allow the juvenile court to use the preponderance of the evidence standard, not a criminal negligence standard,[3] when deciding

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[2] Section 300, subdivision (j) states that a child is only described by that subdivision where "the child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i). . ." (§ 300, subd. (j).)

[3] Appellant admits he derives his argument from the unpublished case of *Jorgelina E. v. Superior Court*, D-048461, decided August 30, 2006. (AOB, p. 7, fn 5.) It should be noted that *Jorgelina E.* is not just an

whether a parent caused the death of another child through abuse or neglect.

Petitioner argues that the only purpose of the statute was to allow jurisdiction where a parent can be found to have criminal liability for the death of a child. He claims the deletion of the need for an actual conviction was designed merely to promote efficiency in applying the provision. (Petition, pp. 9-10.) Yet, again going back to the legislative history, the Senate's analysis specifically says that the purpose of the change was to expand the number of children who could be protected. (Senate Judiciary Committee, History and Analysis of AB 2679, Page c ["This bill *expands* this provision by eliminating the requirement of a conviction of the death of another child and instead simply provides that the parent has caused the death of another child." (italics added).])

In the present case, petitioner took actions that caused 18-month-old Valerie's death. Despite a background that included pervasive family violence, he abandoned this very young child among his inattentive and chaotic family, where she was left unsupervised, leading to the child's arm

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(...continued)
unpublished case. It is a case that originally was unpublished on August 30, 2006, ordered published on September 12, 2006, and then unpublished again on September 13, 2006. A subsequent Petition for Review and request for publication was rejected by this Court on November 15, 2006. (*Jorgelina E. v. Superior Court* 2006 Cal. LEXIS 13571; 2006 Daily Journal DAR 15131.)

being injured. (Opinion, pp. 2-3, 4, 5.) Then, he put her in his car without a safety restraint, and she died. (Opinion, p. 3.) Because of petitioner's neglect, Valerie died, and nothing more was needed under section 300, subdivision (f). As such, the Petition should be denied.[4]

CONCLUSION

Petitioner has not demonstrated grounds for this Court to review the decision of the Court of Appeal, and his petition should be denied.

DATED: November 9, 2010

Respectfully submitted,

ANDREA SHERIDAN ORDIN
County Counsel

By 
JUDITH A. LUBY
Principal Deputy County Counsel

Attorneys for Real Party in Interest

[4] Appellant also has presented an argument as to whether he could have been found to be criminally negligent, while at the same time acknowledging that such an argument is not properly before this Court. (Pet., p. 13.)

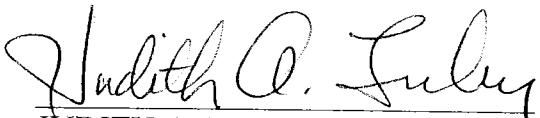
CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.360

The text of this brief consists of 1,540 words as counted by the Microsoft Office Word 2003 program used to generate this brief.

DATED: November 9, 2010

Respectfully submitted,

ANDREA SHERIDAN ORDIN
County Counsel

By 
JUDITH A. LUBY
Principal Deputy County Counsel

Attorneys for Real Party in Interest

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

ARLENE MEZA states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 201 Centre Plaza Drive, Suite 1, City of Monterey Park, County of Los Angeles, State of California; that I am readily familiar with the business practice of the Los Angeles County Counsel for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business.

That on November 9, 2010, I served the attached **ANSWER TO PETITION FOR REVIEW IN THE MATTER OF ETHAN C. et al., SUPREME COURT NO. S187587, 2d JUVENILE NO. B219894**, upon Interested Parties by depositing copies thereof, enclosed in a sealed envelope and placed for collection and mailing on that date following ordinary business practices in the United States Postal Service, addressed as follows:

Clerk of the Court of Appeal
Second Appellate District
Division One
300 South Spring Street
North Tower, Second Floor
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(Trial Counsel for Father)

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2010, at Monterey Park, California.

ARLENE MEZA

DECLARATION OF PERSONAL SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Declarant, ARLENE MEZA, states: I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 201 Centre Plaza Drive, Suite 1, Monterey Park, California 91754-2142.

On November 9, 2010, I personally served the attached **ANSWER TO PETITION FOR REVIEW IN THE MATTER OF ETHAN C. et al., SUPREME COURT NO. S187587, 2d JUVENILE NO. B219894,** to the persons and/or representative of the court as addressed below:

For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a secretary or an individual in charge of the office, between the hours of 9:00 a.m. and 5:00 p.m.

For the court, delivery was made to the Clerk of the Superior Court by leaving the documents in an envelope or package, clearly labeled to identify the hearing officer being served, with the counter clerk in that office, between the hours of 8:30 a.m. and 4:30 p.m.

Honorable Sherri Sobel
c/o Clerk of the Superior Court
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I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2010, at Monterey Park, California.

[DECLARANT]