

Due Diligence And Family Finding

The Situation

In a juvenile dependency case, the agency cannot locate the father. The court finds that the social worker exercised due diligence to find the father, and the case proceeds. At the time of the permanency hearing, the father appears. Apparently, he was not hiding, but the search for him was inadequate. He asks to be considered as placement, but the agency opposes his participation stating that the best interests of the child would not be served.

Possible Solutions

The court could grant the father's WIC 388 petition and permit him to participate and start the proceedings over, or the court could deny the father's petition thus permitting the child to remain in foster care, possibly for adoption.

California appellate law has conflicting decisions on this issue. In the case of *In re R.A.*, 61 Cal. App. 5th 826 (2020), the appellate court reversed the trial court, holding that it is implicit in the juvenile dependency statutes that it is always in the best interests of a minor to have a dependency adjudication based upon all material facts and circumstances and the participation of all interested parties entitled to notice. Other cases support this holding.¹

In similar situations, the courts have held that even though the father was not properly noticed, his effort to join the case and be heard can

been denied. *In re Justice P.*, 123 Cal. App. 4th 181 (2004). In this case the appellate court held that the delay in noticing the father was "inexcusable," but nevertheless affirmed the trial court's decision not to permit the father to participate in the proceedings. The court ruled that it must be shown that his participation would be in the best interests of the minor, and decided it was not.²

What does "due diligence" mean in the context of juvenile dependency proceedings? In the *R.A.* case the court declared that

Reasonable diligence denotes a thorough, systematic investigation and an inquiry conducted in good faith.

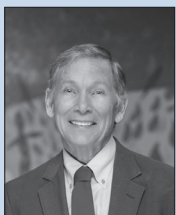
Further, if the agency ignores the most likely means of finding him, it denies him due process. *In re D.R.*, (2019) 39 Cal. App. 5th 583, 591-592.

Current social worker practice includes talking with relatives, examining DMV records and child support documents, and checking jails and prisons. Social workers have also used Facebook to locate a missing parent. A legislative initiative (SB 384) would require the social worker to use Family Finding to locate the missing parent.

Judges and attorneys should carefully examine social worker and probation officer affidavits of due diligence to determine what specific steps have been taken to locate a missing parent. The problem would not exist if the original search for the missing parent had been successful. The stakes are too high not to use the most effective means available to identify, locate, and engage the missing parent and his relatives.

Endnotes:

- 1 *In re DeJohn B.*, (2000) 84 Cal.App.4th 100; *Ansley v. Superior Court*, 185 Cal. App. 3d 477 (1986); *In re Arlyne A.*, 85 Cal. App. 4th 591 (2000); *County of Orange v. Carl D.* (1999) 76 Cal. App. 4th 429, 439. *In re Daniel F.* – A160929 (June, 2021).
- 2 See also *David B. v Superior Court*, 21 Cal. App. 4th 1010 (1994)



Judge Leonard Edwards is retired from the Santa Clara Superior Court. His email is judgeleonardedwards@gmail.com.