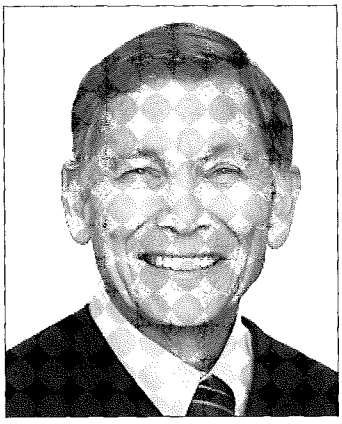

Judge Leonard Edwards (Ret.)
Santa Clara Superior Court

Reasonable Efforts to Prevent Removal: An Important New Case

The California Court of Appeals has recently issued a significant decision that focuses on a rarely litigated issue – the social service agency's (agency) duty to provide reasonable efforts to prevent removal of a child from the family. Federal and state laws require that the agency make efforts and provide services to prevent removal of a child from parental care throughout the first 60 days of a child protection/dependency case. Failure to do so can result in a loss of federal Title IV-E funding for the life of the child's case. The law places the judge in the position of determining whether the agency has provided these services. The judge must make "reasonable efforts" or "no reasonable efforts" findings concerning the agency's efforts to prevent removal based on the evidence presented in court proceedings. As important as the removal decision is, California appellate courts have rarely addressed whether the agency provided adequate services to prevent removal. The case of *In re Ashly F.* begins to fill that void.

In the case, the trial judge at a combined jurisdictional and dispositional hearing removed Ashly and her sister, Cristina, from their home pursuant to Welfare and Institutions Code section 300 (a), (b), and (j), finding that the Department of Children and Family Services (DCFS) made "reasonable efforts" to prevent the children's removal and that there were "no reasonable means" to protect the children other than removing them from their home. The appellate court reversed the "reasonable efforts" and "no reasonable means" findings, holding that there was insufficient evidence to support either finding.

In the case the girls' half-sister reported that she had been severely beaten by the mother. Both Ashly and Christina confirmed that the mother beat them with belts, clothes hangers, and cords. The mother admitted that she beat the children while the father said he knew of one of the beatings and warned the mother not to do it again. The social worker removed both children from their home.

At the detention hearing the social worker stated that there were no reasonable means to avoid placement outside of the home, but did not mention any reasonable alternatives to removal that had been tried or that had been considered. The court found that there were no reasonable means to protect the children other than to remove them from their home and concluded that "reasonable efforts have been made to prevent or eliminate need for [the children's] removal from home." The court did not identify or describe those "reasonable means" or "reasonable efforts" nor does the record show that the court inquired into the availability of services "that would prevent or eliminate the need to detain the child or that would permit the child to return home" as required by California Rules of Court, rule 6.679(c)(2).

Between the time of the detention hearing and the combined jurisdiction and disposition hearing the mother was arrested and convicted of misdemeanor child abuse, placed on probation and ordered to do community service and complete a 52 week parenting class. She also moved out of the family home. At the combined hearing DFCS reported that the mother was attending parenting classes and regularly visiting the children. The social worker's report indicated that the mother knew she had a temper problem and would be entering an anger management class as soon as her work schedule would permit. The DFCS worker stated that the mother "is committed to her children

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involving housing, parental rights, and other aspects of family law, that cry out in the way of a more immediate need for counsel than in others. The small claims courts, in the meantime, provide a very real —and important—forum for people who wish to represent themselves in monetary disputes.

But in the meantime, the Shiver Act is a reasonable and well thought out legislative response to the fact that people of modest means have no very good way, under American law, of protecting their liberty or property in civil cases. It is a time-honored tradition of the American bar to fill this need. Civil Gideon is a step in that favorable direction. Sargent Shriver would be proud. His family can of course speak to this better than I, but I have a sneaking suspicion that on top of directing the Peace Corps, and the War on Poverty, on top of running for Vice-President in 1972, on top of a famously successful ambassadorship to France, Mr. Shriver might well list having his name on this legislation—and on its goals—as one of his proudest legacies.

Endnotes

1. "If Gideon was our roadmap, Lassiter was our roadblock." Debra Gardner, legal director of Baltimore's Public Justice Center and coordinator of the National Coalition for a Right to Civil Counsel, quoted in "Could There Be a Right to Counsel in Civil Cases?" Guy Loranger, Staff Writer, North Carolina Lawyers Weekly, *http://www.probono.net/nc/news/article.285851-Could_there_be_a_right_to_counsel_in_civil_cases.*

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doing well in school and helps them with their school work."

The dispositional report recommended that the children be placed in out-of-home care. It also stated that there are "no reasonable means" to protect the children without removing them from the physical custody of the parents and that "reasonable efforts" were made to prevent the need for removal from their home. Again the report did not provide any specifics as to what "reasonable means" for protecting the children DFCS had considered or what "reasonable efforts" were made to prevent the removal.

At the disposition the trial court adopted the social worker's recommendations and made the "no reasonable means" and "reasonable efforts" findings. The mother appealed.

The appellate court reversed the trial court's findings, ruling that there was not substantial evidence to support the court's dispositional orders. In its opinion the appellate court noted that the California Rules of Court require DFCS to submit a social study which includes (among other things) a discussion of the reasonable efforts made to prevent or eliminate removal. However, the appellate court observed, no such discussion appears in the case record. Moreover, the social worker's report must include what "reasonable means" could be provided by which the children's physical health could be protected without removal. Again there was no discussion about what "reasonable means" had been considered and rejected.

The appellate court also found that the trial court had failed to comply with Welfare and Institutions Code § 361(d) and (c)(1). Pursuant to these statutory provisions the court must "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home[.]...The court shall state the facts on which the decision to remove the minor is based." The appellate court stated that the trial court simply made a finding, but added no facts to support its conclusion. Further the trial court was required to "consider, as a reasonable means to protect the minor, the option of removing an offending parent...from the home." Nothing in the record indicated the court considered this option.

The appellate court wrote that the "reasonable efforts" and "no reasonable means" requirements were safeguards written to keep children with their parents while proceedings are pending, whenever safely possible. Without these safeguards, the findings "can become merely a hollow formula designed to achieve the result the agency seeks."

The trial court's findings were reversed and the case returned to that court. The appellate court opined that had the trial court inquired into the basis for the claims by DFCS that despite its efforts there were "no reasonable means" of protecting the children, it could have concluded that the agency's conclusion was not supported by clear and convincing evidence.

CONCLUSION:

Ashly F. provides important lessons for trial courts in dependency cases when the agency asks the court to remove a child from parental care.

1) The legislature has made it clear that the decision to remove a child is a significant state intrusion into family life. The trial court must spend significant time and effort to determine if alternatives to removal have been considered by the agency.

2) The trial court must be prepared to ask questions of the social worker. The fact that the attorneys do not raise any issues regarding the removal or the services provided by the agency to prevent removal does not obviate the need for the judge to examine social worker actions carefully.

3) The trial court must make specific findings regarding the facts that support the "no reasonable means" and "reasonable efforts" requirements.

4) The trial court must be prepared to make a "no reasonable efforts" finding should it find that the agency did not provide reasonable services to prevent removal.

Endnotes

1. In re Ashley F., 225 Cal.App.4th 803 – Second Appellate District, filed 4/23/14.
2. 42 U.S.C. sections 671(a)(15); Welfare and Institutions Code §361(d).
3. 45 CFR §1356.21(b)(1)(ii)
4. Only two cases have been discovered by the author, In re Amy M., 232 Cal. App. 3d 849, 856 (1993) and In re Cole C., 174 Cal.App.4th 900 (2009). In neither of these cases did the appellate court find that the agency failed to provide appropriate preventive services.
5. Welfare and Institutions Code §361(c)(1)