S226416

Supreme Court No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re R.T., a Person Coming Under the Juvenile Court Law.

Court of Appeal No. B256411

Juvenile Court No. DK03719

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LISA E.,

Defendant and Appellant.

PETITION FOR REVIEW

NANCY RABIN BRUCKER
State Bar No. 101213
11661 San Vicente Boulevard, Suite 500
Los Angeles, CA 90049
(310) 476-0965
Attorney for Objector/Appellant, Lisa E.
Appointed by the Court of Appeal under
The California Appellate Project, Los Angeles
Independent Case System

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CALIFORNIA STATUTES

Welfare and Institutions Code

CALIFORNIA RULES OF COURT

OTHER AUTHORITIES

PETITION FOR REVIEW

TO THE HONORABLE TANI GORRE CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA

ISSUES PRESENTED FOR REVIEW

1. Under Welfare and institutions Code section 300, subdivision (b), dependency jurisdiction may be based on a parent's "failure or inability...to adequately supervise or protect the child." Division One, in the case of *In re Precious D.* ((2010) 189 Cal.App.4th 1251) held this language requires parental unfitness or neglectful conduct. Division Two in the instant case held this language does not require "parental fault." Does section 300, subdivision (b) authorize no-fault, strict liability dependency jurisdiction?

2. Under Welfare and Institutions Code section 300, subdivision (b), dependency jurisdiction may be based on a parent's "failure or inability to adequately supervise or protect the child." When the parent utilizes an

array of resources but cannot control the child's behavior is supervision or protection inadequate?

3. n addition to resolving the conflict between *R.T.* and *Precious D.*, on the constitutionality of the application of section 300, subdivision (b) in the circumstances presented here, review is necessary to resolve the reviewing courts' conflicting use of terms – detriment, parental unfitness, parental fault – to describe the predicate for assumption of dependency jurisdiction and to uniformly define that predicate.

INTRODUCTION

Pursuant to rule 8.500(a)(1) of the California Rules of Court, Appellant and Petitioner, Lisa E. respectfully requests that this Court review the published decision of the Court of Appeal, Second Appellate District, Division Two, *In re R. T.* (4/2/15), No. B256411. A copy of the opinion is attached hereto as Appendix A.

The mother in the case of *In re Precious D.* was confronted with an out-of-control teenage who even DCFS[1] could not control. (*In re Precious*

---

1 Los Angeles County Department of Children and Family Services.

D., supra, 189 Cal.App.4th at pp. 1254-1256.) DCFS argued that Welfare and Institutions Code section 300, subdivision (b)[2] jurisdiction based on a parent's "failure or inability...to adequately supervise or protect the child" did not require that a parent be unfit or neglectful in causing serious physical harm to a child or risk of such harm. (*Id.* at pp. 1253-1254.) The *Precious D.* court held that subdivision (b) required parental unfitness or neglect. (*Id.* at p. 1261.)

The circumstances in the instant case, *In re R T*, are virtually identical to those in the *Precious D.* case: Richshawn was an incorrigible teenager who mother could not control, notwithstanding the efforts she made. (Slip Opn. at pp. 2, 3.) DCFS again argued that "failure or inability...to adequately supervise or protect the child, meant that a child could be described as abused under section 300, subdivision (b) without regard to conduct by the parent. (Slip Opn. at p. 3.) The *R. T.* court concluded the first prong of subdivision (b) described an abused child "without limiting such jurisdiction to cases of parental fault." (Slip Opn. a p.2.)

Precious D. and *R. T.* came to diametrically opposed statutory

---

2 All further statutory references are to the Welfare and Institutions Code unless otherwise identified.

interpretations of the same provision based on essentially identical facts.

Division Two further found that mother's inability to protect her child from harm or risk of harm through no fault of her own constituted a finding of "unfitness", which satisfied the due process requirement that a finding of unfitness be made at some point in the proceedings before parental rights are terminated. (Slip Opn. at pp. 7-9.)

STATEMENT OF THE CASE

On February 21, 2014, DCFS filed a petition pursuant to section 300, subdivision (b) alleging, in essence, that mother ws unable to provide appropriate care and supervision of Richshawn due to her chronic runaway behavior and acting out, that Richshawn refused to return to her mother's home, and that mother's inability to provide appropriate parental care of Richshawn endangered Richshawn and placed her at risk of herm. (CT 1-5.) On April 23, 2014, the petition was sustained as pled. Richshawn was declared a dependent of the court, removed from the custody of mother and placed under the custody of DCFS for suitable placement. Mother was granted reunification services. (CT 166-168)

Mother timely appealed from those findings and orders. (CT 169-170.) She argued that the juvenile court was wrong when it asserted jurisdiction over an incorrigible child under section 300, subdivision (b), when there was no finding that mother abused or neglected Richshawn or

that Richshawn was at risk for abuse or neglect.

Mother filed her Opening Brief on September 24, 2014. Respondent's Brief was filed on November 3, 2014 and Appellant's Reply Brief was filed on December 12, 2014. Along with the Reply Brief, on December 12, 2014, mother filed a Request For Judicial Notice of the court minute order of November 20, 2014, which reflected the juvenile court's order terminating the dependency case as Richshawn had reached the age of eighteen. At the same hearing, the juvenile court opened a new case for Richshawn as a non-minor dependent. The Request for Judicial Notice was granted on January 5, 2015.

The case was submitted after oral argument on February 24, 2015.

On April 2, 2015, the Opinion was filed. Division Two disagreed with the decision in *Precious D.* and held that "no showing of parental blame is required before a juvenile court may assert dependency jurisdiction over a child at substantial risk of physical harm or illness due to her parent's 'failure or inability...to adequately supervise or protect' her." Division Two further found that Richshawn's majority did not moot the appeal "because the juvenile court's assertion of jurisdiction over R. T. may reflect adversely on mother's suitability to act as a caregiver to R T's two children in any future dependency proceedings involving those children (for whom mother had cared in the past.)."

NECESSITY FOR REVIEW

Review is sought pursuant to Rule 8.500(b) to secure uniformity of decision and to settle an important question of law.

ARGUMENT

I. In the Absence of Parental Fault under Section 300, subdivision (b), There Can Be No Dependency Jurisdiction

A. *"No Fault" Jurisdiction is Contrary to Legislative Intent and Supreme Court Decision*

Division Two held that there is sufficient basis for jurisdiction under Welfare and Institutions Code section 300, subdivision (b), when a child is at risk of harm or illness as a result of the failure or inability of a parent to adequately supervise or protect the child without regard to parental fault. (Slip Opn. at p.11.) The decision breaks new ground that undermines the current legal underpinnings of California dependency law.

Division Two rejected DCFS's argument that mother 'abdicated' her parental role by placing R.T. with her grandparents and by declining the Department's invitation to voluntarily consent to jurisdiction. Division Two found that mother's decision to put R. T with the maternal grandparents – "the very same placement the Department later made–was not neglectful or blameworthy." Division Two further found that mother's

decision "not to voluntarily accede to jurisdiction was also not evidence of neglect or culpability." (Slip Opn. at p 4.) And, yet, even though Division Two did not find mother to be neglectful, blameworthy or culpable, it determined that jurisdiction could be established under subdivision (b). Division Two relied on the case of *In re Vonda M.* (1987) 190 Cal.App.3d 753 for the principal "Dependency jurisdiction is not about fault." (Slip Opn. p. 8.) The *Vonda M.* case involved an offending parent and a non-offending parent. The case did not raise the issue of whether dependency jurisdiction could be invoked in the first instance with no showing of parental fault.

Without question, the purpose of the dependency statute is to provide maximum protection for children who are at risk. But, contra to Division Two's assertion that "the Legislature's explicit declaration that dependency jurisdiction is to be read "broadly", citing to section 300.2, that section makes it very clear that the protection is focused on a *very specific group* of children:

> "Children who are currently being physically sexually, or emotionally abused, being neglected, or exploited, and to ensure the safety protection, and physical and emotional well-being of children who are at risk of *that* harm."
> (Sec. 300.2 (emphasis added).)

Dependency law is not for the protection of children who are juvenile delinquents or near delinquents. That was the point of *Precious D.* That court explicitly noted that juvenile courts possess the resources to deal with an incorrigible minor under the delinquency provisions of the Code, section 601 *et seq.* (In re Precious D., supra, 189 Cal.App.4th at p. 1261.) Division Two, however, expressly disagreed with the holding in *Precious D.* (Slip Opn. at p.11.)

Division Two rejected the jurisdiction oriented *Precious D.* case because it derived from the analysis of section 366.26 termination cases. (Slip Opn. at p.7.) The opinion then examined, in isolation from its overall context, the first prong of subdivision (b) in its role as a "first, and preliminary, step in its protective duties." (Slip Opn. at pp. 5-7.)

But, as the Supreme Court stated in *Cynthia D.*, an individual statutory section cannot properly be understood except in the context of the entire dependency process of which it is a part (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253 [a section 366.26 termination case].) The Supreme Court made the same observation again in the case of *In re Nolan W.* – "Given the complexity of the statutory scheme governing dependency, a single provision 'cannot properly be understood except in the context of the entire dependency process of which it is a part.'" (*In re Nolan W.* ((2009) 14 Cal.4th 1217, 1235.)

The holding that dependency jurisdiction can be had without

limiting such jurisdiction to cases of parental fault is explicitly contrary to Legislative intent and to the Supreme Court's holding in *Cynthia D.* and consequently erroneous.

B. *Removal of a Child is No Substitute for an Express Finding that a Parent is Unfit*

The Supreme Court has made clear in *Cynthia D.*, and *Nolan W.*, the individual provisions taken together comprise an integrated and comprehensive statutory scheme governing California dependency law. (*Cynthia D. v. Superior Court*, supra, 5 Cal.4th at pp. 247-250, 253; *In re Nolan W.*, supra, 45 Cal.4th at p. 1235.)

Finding that a minor is a child described by one of the subdivisions of section 300 is the first step. The next step is a decision among several possible dispositional options, including, in general, (I) dismiss the petition (Section 390); (ii) order informal supervision (Section 360, subd.(b)); (iii) leave the child with the parent (Section 362, subd. (b)); (iv) remove the child from the physical custody of the parent (Section 361, subd. (c)) and, (v) place the child with the noncustodial parent (Section 361.2, subd. (a))

If the child is not left with the custodial parent (Section. 362, subd. (b)), the child must be formally removed from the physical custody of that parent. (Section 361., subd. (c).) As an alternative to foster care, the child may be placed with the noncustodial parent. (Section 361.2, subd. (a).) When a child is removed from a parent's custody, the mother and the presumed father are typically entitled to receive reunification services in

order to reunify with the child as a family. (Section 361.5) The parent has between six and eighteen months to reunify with the child. (Section 366.21.) If the child is not reunified with a parent, the court orders a hearing to determine a plan to provide a permanent, stable home for the child. (Section 366.26.)

A child can only be removed from the custody of a parent upon a finding by clear and convincing evidence --

> "There is or would be substantial danger to the Physical health, safety, protection or physical or emotional well-being of the minor if the minor were returned home and there are no reasonable means by which the minor's physical health can be protected without removing the minor form the minor's parent's...physical custody." (Section 361, subdivision (c).)

The drafts of the legislation intended "to eliminate duplication between the regular review hearings and the 'termination hearing'. (*Cynthia D. v. Superior Court*, *supra*, 5 Cal.4th at p. 250.) Thus, "the critical decision regarding parental rights will be made at the dispositional or review hearing, that is, the minor cannot be returned home and that

reunification efforts should not be pursued." (*Ibid.*)

The scheme requires: (1) a court finding of serious injury or a substantial risk of serious future injury to the minor; (2) a finding by clear and convincing evidence that there is substantial danger to the physical health of the minor in order to remove the child from parental custody; and (3) repeated findings by a preponderance of the evidence that return would create a substantial risk of detriment to the well-being of the child. (*Cynthia D. v. Superior* Court, supra, 5 Cal.4th at pp. 25-255.)

The number and quality of the judicial findings that are necessary preconditions to termination of parental rights convey to the fact finder "the substantive certainly about parent unfitness and detriment required" before the juvenile court can consider the termination of parental rights. (*Id.* at p. 356.) By that time, the danger to the child "from parental unfitness" is well established. (*Ibid.*)

Removal of a child from a parent's custody is not substitute for or an alternative to an express finding that a parent is unfit or inadequate. It is a critical finding in the comprehensive statutory scheme. (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1829; *In re Henry V.* (2004) 119 Cal.App.4th 522, 525 ["the high standard of proof by which this finding must be made is an essential aspect of the presumptive, constitutional right of parents to

care for their children"].)

Consequently, as happened in the instant case, the child could be removed from the custodial parent because the child's well-being remained in substantial danger due to the parent's inability to provide the level of services the department deemed appropriate, without regard to the parent's conduct. The child could also be removed because the child remained incorrigible without regard to the omissions and commissions of the parent.

Should the services offered to the parent and to the child prove insufficient to resolve the child's behavioral problems within eighteen months, termination of parental rights becomes a highly realistic possibility. (*In re Paul E.* (1995) 39 Cal.App.4th 996, 1001 ["Once a child is removed, termination of parental right become a distinct possibility unless, at some point prior to the end of reunification services, the child is returned."].) The parent who lost custody without wrongdoing would lose parental rights without there ever having been a showing of parental unfitness. The *Precious D.* court pointed out that no-fault jurisdiction could lead to the termination of the parental rights over an incorrigible child without a constitutionally required finding of unfitness: "Dependency jurisdiction might be asserted over an incorrigible child whose parent is neither unfit or neglectful. Such a jurisdictional finding might then be the

basis for the child's removal and for an order requiring reunification services that are either unnecessary or doomed to failure due to incorrigible conduct on the child's part, and then for the ultimate termination of parental rights. Thus, parental rights might be terminated and the family unit destroyed without any finding of unfitness or neglectful conduct. Such a result would not comport with federal due process principles. (*In re Precious D.*, *Supra*, 189 Cal.App.4th at p. 1261.)

Division Two did not agree. It found that parental fault did not have to be shown in order to make a finding of "unfitness":

> "*Precious D.* reasoned that the assertion of dependency jurisdiction based on parent's blameless inability to control her daughter made it possible for that parent's right over that child to be terminated without any finding of parental unfitness (*Precious D.*, *supra*, 189 Cal.App.4th at pp. 1260o-1261.) We are unpersuaded by this argument for two reasons: ¶First, this argument conflates parental 'unfitness' with parental culpability. But they are not the same. 'Unfitness' is concerned *whether* a parent is able to protect the welfare of her child; culpability is concerned with *why*...¶Second, when 'unfitness' is properly defined, there is

> no danger that allowing a juvenile court to assert jurisdiction over a child based on the parent's failure or inability...to adequately supervise or protect the child from a substantial risk of physical harm or illness will result in the termination of parental rights without a finding by clear and convincing evidence of parental unfitness." (Slip Opn at p. 8.

While acknowledging that "*Precious D.* correctly noted that a juvenile court's assertion of dependency jurisdiction over a child is made only by a preponderance of the evidence", Division Two contended that an "assertion of jurisdiction is 'merely a first step' in a multi-step process that may or may not lead to the termination of parental rights...and due process requires only that a finding of parental unfitness be made 'at some point in the proceedings...before parental rights are terminated." Consequently, Division Two concluded that there is "no danger that dependency proceedings will reach the stage where parental rights are terminated without a finding of parental unfitness."

Division Two concluded in the Opinion, "today there will still be at least one such finding of parental unfitness. This satisfies due process". (Slip Opn. at p. 10.)

Numerous examples of the variety of terms used to describe the circumstances permitting state intervention in the parent/child relationship can be found. In *Cynthia D. v. Superior Court* (93) 5 C4th 242, 254, the Court – addressing the constitutional predicate for termination of parental rights under California's statutory scheme – referred to parental "fault" and parental "inadequacy." In *Precious D.*, the reviewing court appeared to use the terms "parental unfitness" and "neglectful conduct" interchangeably. (*In re Precious D.*, *supra*, 189 CA4th at p. 1260.) In *In re Z.K.* (2011) 201Cal.App.4th 51, 65) the reviewing court, citing other intermediate appellate court decisions, noted that California's dependency scheme no longer uses the term "parental unfitness," requiring instead a finding of "detriment" before a child can be removed from parental custody. In *R.T.*, the reviewing court indicated that "parental unfitness" and "parental fault" are not equivalents. Selection of one term to describe the predicate for state action to intervene in family life and the definition of that term is necessary to the consistent application of California's statutory dependency scheme from detention through selection and implementation of a permanent plan.

C. *No Fault Jurisdiction will result in No Fault Termination of Parental Rights in Some Situations*

Little imagination is required to predict child protective agencies will increasingly cast petition allegations in terms of the language of the first prong of subdivision (b) if only harm or risk of harm need be established while parental responsibility and causation requirements can easily be ignored. In other words, no fault, strict liability based jurisdiction will inevitably lead to the termination of the parental rights of parents who are not at fault.

II. Lisa Adequately Supervised and Protected her Child

The holding in *R. T.* raises the question of what constitutes adequate parental supervision and protection. Is it a question of the severity of the child's behavior, the financial resources a parent is able to devote to correcting the problems, the parent's ability to procure and utilize available public resources, steps the parent took to address the problem, whether the steps resolved the situation, or whether the child comes within the delinquency provisions of California Juvenile law?

The word "adequate" is defined as: "1. Able to satisfy a requirement; suitable. 2. Barely satisfactory or sufficient."(Second College Edition of The American Heritage Dictionary, copyright 1981 by the Houghton Mifflin Company, p.179.) This case embodies the arbitrary

nature of a standard of "adequately" to describe child abuse.

Even under the Court's interpretation of the first prong of section 300, subdivision (b), the circumstances of this case required reversal because mother had done everything she could do. She contacted law enforcement when Richshawn was missing, she sought help from DCFS, and she placed Richshawn in the home of the maternal grandparents hoping that change of location would help. (Slip Opn., at p.2.) Nothing worked. DCFS ran into the same issues when they placed Richshawn in a group home, where she ran from, and DCFS ultimately placed her back in the home of the maternal grandparents. (Slip Opn. at p. 3.)

What more could mother have done, have done differently, or failed to do to prevent or correct the problems? In this case, the answer is nothing. Mother took appropriate steps and contacted proper authorities in order to deal with her daughter's problematic behaviors. Mother's parenting of Richshawn was more than adequate.

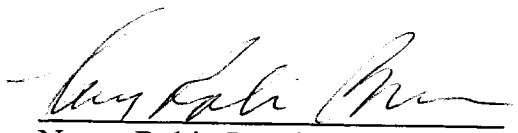
CONCLUSION

The opinion applies the incorrect substantive law as well as the incorrect standard of review. The juvenile court's desire to provide services to Richshawn was not a substitute for compliance with the statute.

The determination in *R. T.* is explicitly contrary to the conclusion reached in *Precious D.* These contrasting opinions demonstrate the questions presented are important and are not settled. Furthermore, selection of one term to describe the predicate for state action to intervene in family life and the definition of that term is necessary in dependency proceedings from detention through selection of a permanent plan. Accordingly, appellant respectfully requests that this Court grant her Petition for Review.

DATED: May 12, 2015

Respectfully Submitted,

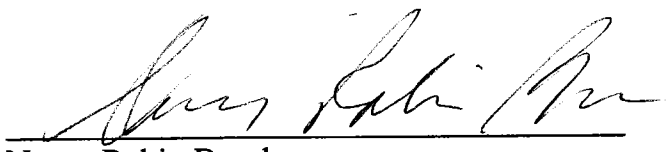


Nancy Rabin Brucker, Attorney
For Appellant/Petitioner Lisa E.

WORD COUNT CERTIFICATE

I certify Appellant's Petition For Review contains 3,570 words, excluding tables, calculated by the word processing program used to generate this brief.

Dated: May 12, 2015



Nancy Rabin Brucker

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 11661 San Vicente Boulevard, Suite 500, Los Angeles, CA 90049.

On May 12, 2015, I served the foregoing **APPELLANT'S PETITION FOR REVIEW** on the parties in this action by placing a true and correct copy thereof in a sealed envelope to the following addresses:

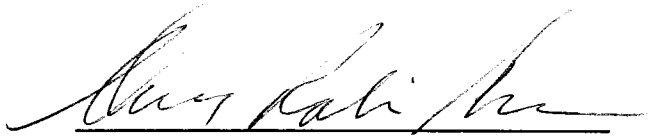
SEE SERVICE LIST ATTACHED

[X] BY MAIL **I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.**

[ ] HAND DELIVERY

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 12, 2015, at Los Angeles, California.



Nancy Rabin Brucker

SERVICE LIST

Office of the Clerk
Edelman Children's Court
201 Centre Plaza Drive
Monterey Park, CA 91754
(For the Honorable Marguerite
Downing, Judge)

Office of the County Counsel
Juvenile Appeals Division
201 Centre Plaza Drive
Monterey Park, CA 91754

Lisa E.
(address on file)
(Appellant and Mother)

Rohini Khanna, Esq.
Los Angeles Dependency Lawyers
1000 Corporate Center Drive, Ste. 430
Monterey Park, CA 91754
(Trial counsel for Appellant and Mother)

Jasminder Deol, Esq.
Children's Law Center
201 Centre Plaza Drive
Monterey Park, CA 91754
(Trial Counsel for Minor)

California Appellate Project
520 South Grand Avenue
Fourth Floor
Los Angeles, CA 90071

Clerk, Court of Appeal
Second Appellate District
Division Two
300 S. Spring St.
Los Angeles, CA 90013

APPENDIX "A"

Filed 4/2/15

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R.T., a Person Coming Under the Juvenile Court Law.	B256411 (Los Angeles County Super. Ct. No. DK03719)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LISA E., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Nancy Rabin Brucker, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

* * * * * *

A "rebellious" and "incorrigible" teen repeatedly runs away from home, placing herself and her infant daughter at "substantial risk [of] . . . serious physical harm." (Welf. & Inst. Code, § 300, subd. (b)(1).)[1] Can the juvenile court assert dependency jurisdiction over the teen on the ground that her mother, who tried everything she could, was still unable "to adequately supervise or protect" the teen? (*Ibid.*) *In re Precious D.* (2010) 189 Cal.App.4th 1251 (*Precious D.*) said "no," reasoning that the first clause of section 300, subdivision (b)(1), requires proof of parental culpability. We respectfully disagree, and hold that the language, structure, and purpose of the dependency statutes counsel against *Precious D*'s conclusion that this provision turns on a finding of parental blameworthiness. When a child thereby faces a substantial risk of serious physical harm, a parent's inability to supervise or protect a child is enough by itself to invoke the juvenile court's dependency jurisdiction.

FACTS AND PROCEDURAL HISTORY

Lisa E. (mother) gave birth to R.T. in 1996. When R.T. was 14, she began running away from home for days at a time, not attending school, falsely reporting that her mother abused her, and at least on one occasion throwing furniture. At least one of her absences necessitated a visit to the hospital. R.T. also began having children—one when she was 15 (who became a dependent of the court) and another a few years later. Mother made efforts to supervise and safeguard R.T.: She went looking for R.T. whenever she left home; she arranged for R.T. to live with mother's parents because R.T.'s grandfather used to work with troubled juveniles and because R.T.'s false reports were made when R.T. and mother were alone; she called the police for help; and she asked the Los Angeles County Department of Children and Family Services (Department) for assistance, although she declined to voluntarily submit R.T. to the Department's jurisdiction. Notwithstanding these efforts, R.T. remained "rebellious," "incorrigible," and "out of control."

---

1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The Department filed a petition to declare then-17-year-old R.T. a dependent of the juvenile court on the ground that she faced "a substantial risk [of] . . . serious physical harm or illness, as a result of the failure or inability of [mother] to adequately supervise or protect" her. (§ 300, subd. (b)(1).) The juvenile court asserted jurisdiction over R.T., denying mother's motion to dismiss the petition. The court reasoned that "the mother can't control [R.T.], so she has given her off to grandparents and they can't control her either." The court then issued a dispositional order authorizing the Department to place R.T. elsewhere while reunification services were provided, and the Department placed her back with her grandparents.

Mother timely appeals.[2]

DISCUSSION

Mother argues that the juvenile court erred in asserting dependency jurisdiction over R.T. (and, by extension, erred in making its dispositional order premised on that jurisdiction) because (1) the first clause of section 300, subdivision (b)(1), as interpreted in *Precious D.*, *supra*, 189 Cal.App.4th 1251, requires proof that the parent's inability to supervise or protect her child stems from being "unfit or neglectful" (*id.* at p. 1254; see also *In re James R.* (2009) 176 Cal.App.4th 129, 135, quoting *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820), and (2) there was insufficient evidence that she was unfit or neglectful because she did her best to control R.T.

It is critical to clarify what *Precious D.* meant by "unfit or neglectful."[3] *Precious D.* involved facts strikingly similar to this case—namely, an incorrigible teen

---

2 While this appeal has been pending, R.T. turned 18. We grant mother's request to judicially notice the court documents so indicating. R.T.'s majority does not moot this appeal because the juvenile court's assertion of jurisdiction over R.T. may reflect adversely on mother's suitability to act as a caregiver to R.T.'s two children in any future dependency proceedings involving those children (for whom mother has cared in the past). (Accord, *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.)

3 *In re James R.* and *In re Rocco M.* add nothing to the analysis because they refer to "neglectful conduct by the parent *in one of the specified forms*" and thus do no more

who repeatedly endangered herself by running away from home, and a mother who "tried everything" to no avail. (*Precious D.*, *supra*, 189 Cal.App.4th at p. 1257.) Thus, the mother in *Precious D.* was in no way neglectful, but was "unfit" insofar as she was unable to supervise or protect her daughter. Thus, by "unfit," the *Precious D.* court was looking not only to the *reason* for the parent's unfitness, but also for some proof that the parent be blameworthy or otherwise at fault. (*Id.* at p. 1259 [concluding there was no basis to be "critical of Mother's parenting skills or conduct"].)

Like the mother in *Precious D.*, mother in this case was neither neglectful nor blameworthy in being unable to supervise or protect her daughter. The Department argues that mother "abdicated" her parental role by placing R.T. with her grandparents and by declining the Department's invitation to voluntarily consent to jurisdiction. But mother's decision to put R.T. with her more experienced grandparents—the very same placement the Department later made—was not neglectful or blameworthy. Her decision not to voluntarily accede to jurisdiction was also not evidence of neglect or culpability.

Because there was no neglect or blameworthy conduct, and because it is undisputed that R.T's behavior placed her at substantial risk of serious physical harm or illness, the propriety of the juvenile court's assertion of dependency jurisdiction turns on a single question: Must a parent be somehow to blame for her "failure or inability" to adequately supervise or protect her child, when that inability creates a substantial risk of serious physical harm or illness, before a juvenile court may assert dependency jurisdiction pursuant to the first clause of section 300, subdivision (b)(1)?

This is a question of statutory interpretation we review de novo. (*Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, 1543.) Our review is informed, but not controlled, by the decision of our sister Court of Appeal on this question. (*The MEGA Life & Health Ins. Co. v. Superior Court* (2009) 172 Cal.App.4th 1522, 1529.)

---

than recharacterize the statutory grounds as "neglect." (*In re James R.*, *supra*, 176 Cal.App.4th at p. 135; *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820.)

I. Statutory construction

In answering the question presented by this case, we start with the statutory language. (*Riverside County Sheriff's Dept. v. Stiglitz* (2014) 60 Cal.4th 624, 630 (*Stiglitz*).) The first clause of section 300, subdivision (b)(1), confers dependency jurisdiction over a child who "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (§ 300, subd. (b)(1).) The text itself does not speak to whether the parent must also be to blame for this "failure or inability."[4]

We must interpret this silence in the manner most consonant with the legislative intent behind this provision. (*Stiglitz*, *supra*, 60 Cal.4th at p. 630.) Two indicia—one implicit and one explicit—point to the conclusion that this clause of section 300, subdivision (b)(1) has no culpability requirement.

The language we are interpreting is just one of many provisions setting forth various grounds for dependency jurisdiction. Some of these provisions require a showing that the parent acted intentionally. (See § 300, subds. (a) [parent's "nonaccidental" "inflict[ion]" of physical harm on child], (c) [child suffered, or is at substantial risk of suffering, serious emotional damage "as a result of" the parent's conduct], (d) [parent's sexual abuse of child], (e) [parent's infliction of severe physical abuse on a child under five years old], (g) [parent incarcerated or voluntarily surrendered child at safe surrender site], (i) [parent subjected child to acts of cruelty].) Under other provisions, negligent conduct by the parent will suffice. (See § 300, subd. (b)(1) [second clause; parent's "willful or negligent failure" to supervise or protect child when leaving child with another person]; *ibid.* [third clause; parent's "willful or negligent failure" to provide "adequate food, clothing, shelter, or medical treatment"]; *id.*, subd. (d) [parent did not protect child from sexual abuse, when parent knew or should have known of risk]; *id.*,

---

[4] For clarity's sake, we will refer to "parents," but our discussion applies equally to "guardians."

subd. (e) [same, as to severe physical abuse of child under five years old]; *id.*, (i) [same, as to acts of cruelty]; *id.*, (j) [parent's "abuse or neglect" caused death of another child]; *id.*, (g) [parent's whereabouts are unknown].) And for still others, dependency jurisdiction is appropriate when the parent is not to blame. (See § 300, subd. (c) [child is suffering, or at substantial risk of suffering, serious emotional damage, and "has no parent or guardian capable of providing appropriate care"]; *In re Alexander K.* (1993) 14 Cal.App.4th 549, 557 [this clause of section 300, subdivision (c), requires "no parental fault or neglect"]; *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 921 [same]; § 300, subd. (g) [when child "has been left without any provision for support"]; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1128-1129 (*D.M.*) [this clause of section 300, subdivision (g), need not be willful]; § 300, subd. (b)(1) [fourth clause; parent's "inability . . . to provide regular care for the child" due to parent's "mental illness" or "developmental disability"].)

Where, as here, the Legislature has expressly made parental culpability an element of some grounds for dependency jurisdiction but not an element of others, we generally infer that the omission of a culpability requirement from a particular ground was intentional. (*In re Ethan C.* (2012) 54 Cal.4th 610, 638 ["When language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful."] (*Ethan C.*).) This inference is even stronger when the differential treatment appears in the same section and, indeed, the very same subdivision—subdivision (b)(1)—we are interpreting.

This inference becomes compelling when read in conjunction with the Legislature's explicit declaration that dependency jurisdiction is to be read broadly: "[T]he purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.)

Construing the first clause of section 300, subdivision (b)(1) to require a showing of parental fault, as mother urges, not only ignores these indicia of legislative intent, but also tasks the judiciary with drawing lines better drawn by the Legislature. Mother argues that her inability to supervise or protect R.T. is not blameworthy, but that a parent's inability to supervise or protect a younger child might be. "At some point," mother reasons, "the order of human growth and development" shifts the blame from parent to child. If we were to recognize a culpability element, we would have to fix that point. But where would we place it, and what criteria would we use in doing so? This blameworthiness line, if it is to be drawn at all, is a policy decision within the special competence of the legislative branch, not the judicial branch.

When read in light of these considerations, the text and purpose of the first clause of section 300, subdivision (b)(1) point to the conclusion that a showing of parental blame is not required.[5]

II. Countervailing arguments

Mother offers two arguments that, in her view, compel us to reject the statutory analysis set forth above.

A. Constitutional avoidance

Mother asserts that the interpretation of the first clause of section 300, subdivision (b)(1) is governed by a different and weightier canon of statutory construction—namely, the "cardinal" rule that a statute should, where possible, be construed in a manner that avoids doubts about its constitutionality. (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373.) This canon was the basis for *Precious D.*'s ruling. (*Precious D., supra*, 189 Cal.App.4th at pp. 1260-1261.)

Natural parents have a "fundamental liberty interest . . . in the care, custody, and management of their child[ren]." (*Santosky v. Kramer* (1982) 455 U.S. 745, 753 (*Santosky*).) Consequently, due process guarantees that the state may not terminate a

---

5 Of course, the assertion of jurisdiction on this basis is specific to R.T., and is not a global finding that mother is unfit as to other children. (*In re Cody W.* (1994) 31 Cal.App.4th 221, 225-226 (*Cody W.*).)

parent's rights with respect to her child without first making (1) a showing of parental unfitness, (2) by clear and convincing evidence. (*Id.* at pp. 747-748, 758, 760, fn. 10; *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1130 (*Ann S.*); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254 (*Cynthia D.*).) *Precious D.* reasoned that the assertion of dependency jurisdiction based on parent's blameless inability to control her daughter made it possible for that parent's right over that child to be terminated without any finding of parental unfitness. (*Precious D., supra*, 189 Cal.App.4th at pp. 1260-1261.) We are unpersuaded by this argument for two reasons.

First, this argument conflates parental "unfitness" with parental culpability. But they are not the same. "Unfitness" is concerned *whether* a parent is able to protect the welfare of her child; culpability is concerned with *why*. As noted above, unfitness can stem from a parent's willful acts, her negligence, or acts entirely beyond her control and for which she is not culpable (such as suffering from a developmental disability). The decisions governing the constitutional constraints on the termination of parental rights define "unfitness" with reference to the child's welfare, not the culpability of the child's parents. (See *Santosky, supra*, 455 U.S. at p. 766 [noting "state's *parens patriae* interest in preserving and promoting the welfare of the child"]; accord, *In re Vonda M.* (1987) 190 Cal.App.3d 753, 757 ["the imposition of juvenile dependency jurisdiction must depend upon the welfare of the child, not the fault of or lack of fault of the parents"].) Indeed, if unfitness were synonymous with fault, all of the grounds for dependency jurisdiction having no element of parental blame would be constitutionally suspect. (See § 300, subds. (b)(1) [fourth clause], (c), (g).)

Second, when "unfitness" is properly defined, there is no danger that allowing a juvenile court to assert jurisdiction over a child based on the parent's "failure or inability . . . to adequately supervise or protect the child" from a substantial risk of physical harm or illness will result in the termination of parental rights without a finding, by clear and convincing evidence, of parental unfitness. *Precious D.* correctly noted that a court's assertion of dependency jurisdiction over a child is made only by a preponderance of the evidence. (§§ 300, 355.) But the assertion of jurisdiction is

"merely a first step" (*Ethan C.*, *supra*, 54 Cal.4th at p. 617) in a multi-step process that may or may not lead to the termination of parental rights (*Cynthia D.*, *supra*, 5 Cal.4th at pp. 247-250 [detailing steps]), and due process requires only that a finding of parental unfitness be made "'at some point in the proceedings . . . before parental rights are terminated'" (*Ann S.*, *supra*, 45 Cal.4th at p. 1134, italics omitted; *In re Z.K.* (2011) 201 Cal.App.4th 51, 66). Under California law, there is no danger that dependency proceedings will reach the stage where parental rights are terminated without a finding of parental unfitness.

The parental rights of mothers and "presumed" fathers not having custody of their children may be terminated only upon a finding, by clear and convincing evidence, of their unfitness made at the permanency planning hearing conducted pursuant to section 366.26. (*In re T.G.* (2013) 215 Cal.App.4th 1, 20 ["[A] court may not terminate a nonoffending, noncustodial mother's or presumed father's parental rights without finding, by clear and convincing evidence, that awarding custody to the parent would be detrimental."]; *Cody W.*, *supra*, 31 Cal.App.4th at p. 225 [finding of "detriment" is "'equivalent [to] a finding of unfitness'"], citing *In re Jasmon O.* (1994) 8 Cal. 4th 398, 423; *In re G.P.* (2014) 227 Cal.App.4th 1180, 1193 [same].)

The parental rights of parents having custody of their children, like mother in this case, may also only be terminated at a permanency planning hearing. (§ 366.26, subd. (c).) Although no finding of unfitness need be made at that hearing for custodial parents (*In re Amanda D.* (1997) 55 Cal.App.4th 813, 819; *In re Jason J.* (2009) 175 Cal.App.4th 922, 931, fn. 3), there are only four procedural paths to that hearing for custodial parents and each them of requires a finding, by clear and convincing evidence, of parental unfitness. A section 366.26 hearing may be convened (1) after a child (a) is removed from her parent upon a finding, by clear and convincing evidence, on one of six grounds of unfitness (§ 361, subds. (c)) and (b) is not returned to her parent's custody for at least 12 months (§§ 366.26, subd. (c)(1), 366.21, subd. (g), 366.22, subd. (a), 366.25, subd. (a)(3)), (2) after a child is removed due to the parent's incarceration or abandonment without support and upon a finding, by clear and convincing evidence, that

(a) the parent's whereabouts are unknown and (b) the parent has not contacted or visited the child for at least six months (§§ 366.26, subd. (c)(1), 366.21(e)), (3) after a finding, by clear and convincing evidence, that services to reunify the parent and child are unwarranted for one of 16 different reasons all involving parental unfitness (§ 361.5, subd. (b)) or that reunification services with an incarcerated or institutionalized parent would be detrimental to the child (§ 361.5, subd. (e)(1); see generally §§ 366.26, subd. (c)(1), 361.5, subd. (f)), or (4) after finding that the parent has been convicted (beyond a reasonable doubt) of a felony indicating parental unfitness (§ 366.26, subd. (c)(1)). More than twenty years ago, our Supreme Court observed that "[b]y the time dependency proceedings have reached the stage of a section 366.26 hearing, there have been multiple specific findings of parental unfitness." (*Cynthia D., supra*, 5 Cal.4th at p. 253.) As outlined above, today there will still be at least one such finding of parental unfitness. This satisfies due process.

We accordingly conclude there is no constitutional imperative for engrafting a blameworthiness element to the first clause of section 300, subdivision (b)(1).

B. Blurring of delinquency and dependency jurisdiction

Mother next argues that her daughter's intransigence is better viewed as an issue of truancy under section 601 that falls under the juvenile court's delinquency jurisdiction, rather than an issue of dependency. (See § 601, subd. (a) [delinquency jurisdiction may be asserted over minor "who persistently or habitually refuses to obey the reasonable and proper orders of his or her parents . . . or who is beyond the control of [his or her parents]"]; *People v. Rice* (1970) 10 Cal.App.3d 730, 736 [runaways qualify under section 601].) To construe section 300 to apply in this situation, mother fears, will empower the Department to choose which jurisdiction—dependency or delinquency—to invoke, and will thereby empower the Department to nullify section 601 through disuse.

However, the power to decide which jurisdictional basis to invoke has long resided with the executive branch. To be sure, the courts have a say in choosing which jurisdictional basis—dependency or delinquency—to exert once the executive branch has invoked both. (§ 241.1; *D.M., supra*, 173 Cal.App.4th at p. 1127.) But the courts have

no say in which jurisdiction the executive chooses to invoke in the first place. To the contrary, "it rests in the discretion of the executive branch employees—social workers, probation officers, and the district attorney—whether to file such petitions, not the juvenile court." (*D.M.*, at p. 1127; §§ 290.1 [invocation of dependency jurisdiction entrusted to probation officers and social workers], 650 [invocation of delinquency jurisdiction entrusted to probation officers or district attorneys].)

What our interpretation of the first clause of section 300, subdivision (b)(1) does is recognize a bigger galaxy of cases in which the executive will get to decide between invoking truancy and delinquency jurisdiction (under sections 601 and 602, respectively) on the one hand, and dependency jurisdiction on the other. But this larger galaxy is entirely consistent with the Legislature's expressed intent that dependency jurisdiction be broadly construed (§ 300.2), and in no way nullifies section 601.

For these reasons, we respectfully disagree with the decision in *Precious D.*, and hold instead that no showing of parental blame is required before a juvenile court may assert dependency jurisdiction over a child at substantial risk of physical harm or illness due to her parent's "failure or inability . . . to adequately supervise or protect" her. (§ 300, subd. (b)(1).)

DISPOSITION

The jurisdictional and dispositional orders of the juvenile court are affirmed.

CERTIFIED FOR PUBLICATION.

_____, J.

HOFFSTADT

We concur:

_____, Acting P. J.

ASHMANN-GERST

_____, J.

CHAVEZ