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CALIFORNIA ACADEMY OF APPELLATE LAWYERS

By Electronic Filing

October 28, 2021

California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Guardianship of S.H.R.*, No. S271265
Amicus Letter Supporting Grant of Review

Honorable Justices,

The California Academy of Appellate Lawyers writes, pursuant to California Rules of Court, rule 8.500(g) to urge the Court to grant review in this matter. As set forth below, the Academy believes this case presents significant issues of appellate procedure and due process that warrant this Court's review.

1. Interest of the Academy

The Academy's members are more than 100 experienced appellate practitioners whose common goals include promoting and encouraging sound appellate procedures that ensure proper and effective representation of appellate litigants, efficient administration of justice at the appellate level, and improvements in the law affecting appellate litigation.

The Petitioner is represented by a member of the Academy. No party, attorney for a party, or judicial member drafted this letter or participated in our decision to file it.

2. Standard of Review

The Opinion creates confusion and a split in authority regarding the applicable standard of review in state court proceedings related to Special Immigrant Juvenile (“SIJ”) determinations. The Opinion concludes that the trial court’s factual findings would ordinarily be reviewed for substantial evidence but, because Petitioner had the burden of proof and the trial court made findings against him, “the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.” (Typed Op. at p. 11 (internal quotation marks omitted).) While each of these statements is correct when viewed in isolation, the Opinion’s holding regarding Petitioner’s argument that the trial court applied an incorrect legal standard to the facts conflicts with existing precedent.

With respect to that issue, the Opinion holds that the trial court’s legal reasoning is not subject to review because the appellate court “review[s] the court’s order, ... not its reasoning, and may affirm the order if its correct on any theory of applicable law” (*See id.* at p. 12 n.8. (h). While that standard may apply when a ruling is subject to de novo review, existing precedent holds that a different standard applies when a factual finding is made using an incorrect legal analysis. *Dyer v. Department of Motor Vehicles* (2008) 163 Cal. App. 4th 161, held that “[w]here the trial court decides the case by employing an incorrect legal analysis, *reversal is required* regardless of whether substantial evidence supports the judgment.” (*Id.* at p. 174 [emphasis added; cited at Pet. at p. 27 n.5].) Were that not the case, the appellant would be deprived of a fact-finder who considers the evidence using correct legal principles.

Dyer correctly recognized that, on a substantial evidence appeal, the appellate court does not act as a fact-finder but merely decides whether a reasonable fact-finder *could* have ruled against appellant. As the Opinion here acknowledges, “[t]he substantial evidence test ... does not ask what proposed facts are more likely than not to be the true facts; rather, it is aimed at determining a legal issue: Whether there is substantial evidence to support factual findings.” (Typed Op. at pp. 13–14; *see also Dyer*, 163 Cal. App. 4th at p. 174 [where trial court failed to decide a factual issue due to an incorrect legal conclusion, it had failed to perform an “essential function” and conducting a substantial evidence review would be “impossible,” requiring remand].)

Here, Petitioner contends that the trial court incorrectly relied on the “poverty alone” rule emanating from parental rights cases. That rule provides that

poverty alone is not a basis to terminate parental rights. (See Pet. at pp. 27–28.) The trial court relied on that legal rule—and not a factual finding—to determine that S.H.R. had not established “neglect” for purposes of an SIJ determination. (Appellant’s Appendix 168). Thus, if Petitioner is correct that the trial court erred in relying on the “poverty alone” rule, the Court of Appeal could not properly apply the deferential substantial evidence standard to affirm the order’s conclusion that the minor had not established neglect. To do so would, as already explained, deprive Petitioner of a fair factual hearing by a fact-finder applying the correct legal standard. And that would be a denial of due process. *Fuentes v. Shevin* (1972) 407 U.S. 67, 80 [“Parties whose rights are to be affected are entitled to be heard . . .”].

3. Appealability

In addition, as the Petition notes, a ruling by this Court would also provide an opportunity for clarification of the paths to appellate review of orders under the SIJ statute. The Opinion here correctly held that such an order is appealable “when ‘no issue is left for future consideration except the fact of compliance or noncompliance with the terms’ of the order.” (Typed Op. at p. 10 [quoting *Griset v. Fair Political Practices Comm’n* (2001) 25 Cal. 4th 688, 696].) In addition, the Opinion rightly concluded that “review by writ petition may also be appropriate under the circumstances of a given case”—i.e., “when remedy by appeal is inadequate” (Typed Op. at p. 10); that would most commonly be the case when relief is required urgently before an appeal can be resolved in the usual course.

Here, the Petitioner filed both a notice of appeal and a writ petition because the procedural law in this area was unclear. (Pet. at p. 17.) Prior to the Opinion in this case, various decisions had reviewed SIJ orders either by appeal or writ, generally without commenting on the appropriate means of review. (See Typed Op. at p. 9 [citing cases].) However, one decision, *O.C. v. Superior Court* (2019) 44 Cal. App. 5th 76, can be read to suggest that a writ petition, and not an appeal, is the appropriate means of seeking review. There, the petitioner—who had been unsuccessful in the trial court—filed an appeal. Rather than adjudicating the appeal, the Court of Appeal decided that, “[t]o ensure [petitioner] obtains appellate review of the probate court’s findings, we exercise our discretion to treat the appeal as a petition for writ of mandate.” (*Id.* at p. 82.) An express ruling from this Court on the procedural avenues for review would clarify this point.

4. Conclusion

Expressing no view of this dispute's merits, the Academy respectfully urges this Court to grant review to address the issues of appellate procedure and due process discussed above. In addition, the Academy supports Petitioner's request that the opinion be depublished pending review.

Respectfully submitted,

/s/ Sean M. SeLegue
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for

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APPELLATE LAWYERS
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PROOF OF SERVICE
Supreme Court No. S271265
(Court of Appeal No. B308440)
(Los Angeles County Super. Ct. No. 19AVPB00310)

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Three Embarcadero Center, 10th Floor, San Francisco, California 94111-4024. On October 28, 2021, I served the foregoing document(s) described as **AMICUS LETTER SUPPORTING GRANT OF REVIEW** on the interested parties in this action by sending a true copy addressed to each through TrueFiling, the electronic filing portal of the California Supreme Court, pursuant to Local Rules, which will send notification of such filing to the email addresses denoted on the case's Electronic Service List.

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As the below recipient is not able to be served electronically via TrueFiling, I caused the document to be enclosed in a sealed envelope or package addressed to the person named at the address listed below and the envelope was placed for collection and mailing, following our firm's ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

Clerk of the Court
LOS ANGELES COUNTY SUPERIOR COURT
Michael D. Antonovich Antelope Valley Courthouse
42011 4th Street West
Lancaster, CA 93534

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on October 28, 2021.



JANE RUSTICE