

*Heidi S.*

Here we have another Dependency Court/Family Court crossover case. Mom's arrest for child endangerment in a public park with her 17 month old son while under the influence of alcohol and controlled substances triggered a Dependency Court Petition, which resulted in a custody award to father. The Juvenile Court then terminated its jurisdiction and entered an Exit Order. Mom, shortly thereafter, initiated a family law proceeding seeking to modify the Exit Order regarding custody and visitation. Mom had a history of alcohol, drug and emotional problems.

The appellate opinion summarizes the respective roles of the juvenile court and the family law court, particularly with respect to an Exit Order. The patient and careful family law trial court held numerous hearings, receiving testimony from many witnesses and experts. Its orders were affirmed. Welfare and Institutions Code section 302(d) mandates that a juvenile court Exit Order cannot be modified without a significant change in circumstances and a finding that modification is in the child's best interests.

The interesting core of this opinion is its discussion and approval of the trial court's imposition of alcohol and drug testing protocols under Family Code section 3041.5, which it characterized as an issue of first impression. The appellate court rejected Mother's contentions that by requiring her to submit to drug testing indefinitely as a condition of further visitation and ordering that a positive drug test result would immediately trigger a return to the reduced visitation schedule imposed by the Exit Order, the family court violated Family Code section 3041.5. The discussion of the requirements and discretion of section 3041.5 testing protocols is mandatory reading. Imposition of an indefinite time period of drug and alcohol testing was approved, as was the authority of the trial court to order that a positive drug test result would immediately trigger a reduced visitation schedule. These two points are the important take-aways from this opinion. The court pointedly observed that a change in the visitation schedule was not the equivalent of a change in custody, which is not permitted within the scope of section 3041.5. The opinion states in forthright fashion that this case is a clear example of the boundary between the juvenile court's authority and the family court's authority.

Put this one in your reference file.

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