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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF XXXXXX

In the Matter of

Case Number: XXXX

R. XXXX and V. XXXX,

Minors.

MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING CHILDREN'S CLOSING ARGUMENT AS TO THE ADJUDICATION HEARING

Date: June XX, XXXX

Time: 8:30 a.m.

Dept.: XXXX

I. THE COURT HAS INHERENT AUTHORITY TO AMEND A DEPENDENCY PETITION TO CONFORM TO PROOF

Welfare and Institutions Code section 348 authorizes the juvenile court to amend a dependency petition to conform to proof in accordance with Code of Civil Procedure §469 et seq. “Amendments to conform to proof are favored, and should not be denied unless the pleading as drafted prior to the proposed amendment would have misled the adversarial party to its prejudice.” (*In re Jessica C. et al.* (2001) 93 Cal. App. 4th 1027, 1042.) Additionally, “the ability to amend according to proof plays an important role in the overall dependency scheme,” given that petitions are drafted by social workers and often in a hurry. (*Id.* at pp. 1035, 1041; WIC §§325, 332.) Only if the variance between pleading and proof is so great that it would violate due process to allow it should the court refuse to amend. (*Jessica C. supra*, at pp. 1041-1042.)

1 In *Jessica C.*, the court found that the juvenile court had erred in refusing to allow an
2 amendment to conform to proof, thereby prejudicing the children. (*Jessica C. supra*, 93 Cal.
3 App. 4th 1027, 1040-1041.) In that case, the petition alleged that the father had “penetrated”
4 his daughter’s vagina with his penis, and it was proposed that the petition be amended to state
5 instead that the father had “touched” her vagina with his penis. (*Id.* at pp.1040-1041.)
6 Although the trial court believed it lacked the authority to amend the petition according to
7 proof, the appellate court reversed, holding instead that the father could not seriously argue that
8 he would have prepared his defense differently had the petition alleged touching instead of
9 penetration. (*Id.* at p. 1042.)

10 Here, the original pleading stated V. was sexually abused by her stepfather, J. This
11 abuse included, but was not limited to, forcibly raping her, thus placing V. and her siblings, R.
12 and B, at risk of sexual abuse. Even if the court does not find that forcible rape occurred, the
13 stepfather’s acts of touching V’s vagina with his penis is still conduct that constitutes sexual
14 abuse. Dismissing the petition without attempting to amend it to conform to proof would
15 prejudice V. by not acknowledging that some form of sexual abuse did indeed occur.

16
17 **II. THE COURT IS NOT REQUIRED TO FIND ANY FAULT BY THE**
18 **MOTHER TO TAKE JURISDICTION OVER V. AND R. UNDER**
19 **WELFARE AND INSTITUTIONS CODE SECTION 300 (D)**

20 According to the plain language of WIC §300(d)¹, the fact that a child has been
21 sexually abused by a member of his or her household is all that is required for jurisdiction
22 under this subdivision. It is not necessary to find that the parent has failed to protect the child.
23 This sort of strict liability under former subdivisions of WIC §300 has been recognized and
24 affirmed by several appellate courts. (*See In re Jennifer P.* (1985) 174 Cal. App. 3d 322, 326
25 [held that former WIC §300(d) “embodies a strict liability concept in the sense the court’s
26 assumption of jurisdiction is appropriate whenever the juvenile’s home is presently unfit,

27 ¹ WIC §300(d) states: “The child has been sexually abused, or there is a substantial risk that the child will be sexually
28 abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her
household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or
guardian knew or reasonably should have known that the child was in danger of sexual abuse.”

1 regardless of whether the unfitness is due to the fault of the parent(s) or some other reason”]; *In*
2 *re Nicole B.* (1979) 93 Cal. App. 3d 874 [irrelevant under former WIC §300(d) whether the
3 parent was unfit as the court need only find that one of the circumstances described in WIC
4 §300 existed and that the child may need assistance]; and *In re Christina T.* (1986) 184 Cal.
5 App. 3d 630 [fact that the child was sexually abused by unknown perpetrator and parent was
6 unable to protect was sufficient for jurisdiction].) While the *present* unfitness of the home is
7 the fundamental criterion underlying juvenile court intervention under WIC §300(d) (*Jennifer*
8 *P., supra*, at p. 326), ample evidence exists in this case to support that V. and her siblings
9 would be at risk without this court’s supervision.

10 V. has only recently disclosed the sexual abuse she suffered and has not had time to
11 complete the necessary counseling she needs. She also cannot completely rely on her mother
12 for support during this difficult time because of her mother’s own emotional instability.
13 Additionally, this emotional instability has caused V. serious concern for her mother’s physical
14 and mental well-being. V. was visibly distraught while testifying in chambers regarding her
15 mother’s hospitalizations and instability. V’s need for continued support is also evidenced by
16 her failing grades in school. These concerns warrant continued jurisdiction to ensure V.
17 receives needed mental health services and has available support from the Department of
18 Children and Family Services’ resources.

19
20 Dated:

Respectfully submitted,

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By: XXXX XXXX

Attorney for Minors