

STATE OF WHITTIER  
COURT OF APPEAL

**MARTA DOMINGUEZ**

v.

**STATE OF WHITTIER**  
**Ms. Kathryn Candler, Director of the**  
**Whittier Department of Child Welfare**

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**Decided: November 16, 2015**

Justice Kitt delivered the opinion of the Court:

Appellant Marta Dominguez appeals the Jennings County Juvenile Court's adjudication of Jasmine as a neglected and abandoned child, and disputes the use of that adjudication in support of the Juvenile Court's Special Immigrant Juvenile Status (SIJS) findings.<sup>1</sup> Ms. Dominguez also appeals termination of her reunification services on the grounds that DCW did not make reasonable efforts at reunification.

For the reasons discussed below this Court affirms the orders of the Juvenile Court.

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**STATEMENT OF THE FACTS**

Jasmine Dominguez was born in Guatemala on November 1, 2000, to 20-year-old Marta Dominguez. Jasmine's father died before her birth in a shooting in their neighborhood. At birth, Jasmine was diagnosed with a rare cardiac condition. Because no advanced medical care was available in Guatemala, doctors advised that Jasmine travel to the United States. By January

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<sup>1</sup> Special Immigrant Juvenile Status is a form of immigration relief that requires a state court to make certain findings before the child is eligible to apply for a special immigrant juvenile visa with U.S. Citizenship and Immigration Services. In this case, the Juvenile Court was tasked with making those findings, and Jasmine would have to apply following resolution of this appeal for her SIJS visa, assuming the Juvenile Court's findings are upheld.

2002 Ms. Dominguez secured visas for herself and Jasmine, and saved enough to purchase plane tickets to travel to Jennings County. On January 20, 2002, Jasmine and Ms. Dominguez arrived in Jennings County and began living with Ms. Dominguez's sister, Ana Ortiz, an unmarried woman who works as a nurse and has always wanted children of her own. Ms. Ortiz lived in a safe neighborhood in a 2-bedroom apartment.

On January 30, 2002, Jasmine went into cardiac arrest. She was transported by ambulance to the Jennings County Medical Center, a large public hospital with an indigent care program, where Jasmine had life-saving surgery. By June 2002, Jasmine was relatively stable, but still required ongoing outpatient medical care. However, their visas were expiring so Ms. Dominguez left Jasmine in the care of Ms. Ortiz and returned to Guatemala with the stated intention to return as soon as she could renew her visa. Ms. Ortiz's understanding was that Ms. Dominguez would return to care for Jasmine as soon as she could.

Between June 2002 and June 2005, although her visa was expired, Jasmine lived with Ms. Ortiz. Ms. Ortiz housed and cared for Jasmine, administered all of her medication and took her to all of her monthly medical appointments. Each year, Jasmine received a birthday card from her mother and a phone call on Christmas. Beyond that, Ms. Dominguez did not communicate with Jasmine, send funds or inquire about Jasmine's health. Ms. Dominguez was reportedly busy trying to find work and taking care of her elderly mother in Guatemala.

In June 2005, Jasmine's health was mostly stable and she returned to Guatemala to go to school and live with her mother. Over the next several years, life in Guatemala was difficult. Homelessness plagued Ms. Dominguez and Jasmine since Ms. Dominguez did not have stable employment. Jasmine did not have regular medical check-ups or access to much-needed medication, and only occasionally went to school. In January 2013, Jasmine's health took a turn

for the worse. Again, fearing heart failure, doctors in Guatemala advised that Jasmine should return to the United States for advanced medical care. Ms. Dominguez got Jasmine a visa, and sent her to Jennings County to be cared for by Ms. Ortiz. Ms. Ortiz took Jasmine to her medical appointments and enrolled her in school. In January 2013, Jasmine had open heart surgery with the purpose of repairing her valves and increasing cardiac function. Although the surgery was successful, doctors advised that Jasmine's heart would eventually fail and that she would need a transplant. During this time, Ms. Dominguez remained in Guatemala.

Jasmine was screened for a heart transplant, but the screening committee concluded that because of Jasmine's immigration status and unorthodox caregiving arrangement, that she was not a candidate for the transplant list. This means Jasmine was barred from receiving a transplant until her circumstances, namely her immigration status, changed. Ms. Ortiz shared this information with Ms. Dominguez. In June 2013, Ms. Dominguez returned to Jennings County on a six-month visa. By July 2013, Ms. Dominguez became overwhelmed by Jasmine's health condition. Without telling Ms. Ortiz or saying goodbye to Jasmine, Ms. Dominguez left in the middle of the night on July 12, 2013, and returned to Guatemala. Ms. Ortiz continued to care for Jasmine and even though she did not know it to be true, Ms. Ortiz told Jasmine that she thought Ms. Dominguez would someday return. Jasmine was confused and distraught by Ms. Dominguez's sudden departure.

On January 6, 2014, while at school, Jasmine couldn't breathe during her physical education class. The ambulance transported Jasmine to Jennings County Medical Center, where she was placed on oxygen therapy and stabilized. For several hours, Jasmine was alone in the Pediatric Intensive Care Unit. A hospital social worker called Jasmine's teacher to learn that Jasmine was cared for by her aunt, Ms. Ortiz. The hospital social worker located Ms. Ortiz, but

also called the Department of Child Welfare (DCW) to report that Jasmine was alone in the hospital with no legal guardian in the country. Sam Wells, a social worker from the DCW, began his investigation.

Mr. Wells visited the home, and interviewed Ms. Ortiz. Mr. Wells learned that Ms. Dominguez left without notice to Ms. Ortiz and did not provide any financial support to Ms. Ortiz while Jasmine was in her care. After unsuccessfully attempting to reach Ms. Dominguez in Guatemala by phone (5 times) and mail (2 times), Mr. Wells filed a petition with the Jennings County Juvenile Court alleging neglect and abandonment by Ms. Dominguez, pursuant to Whittier Juvenile Code §§ 100(b) and 100(g) respectively.

On January 29, 2014, while Jasmine remained in the hospital, the Jennings County Juvenile Court detained Jasmine pursuant to Whittier Juvenile Code §§ 100(b) and 100(g) based on Jasmine's heart condition, the medical care that she needed, and Ms. Dominguez's disappearance to Guatemala. The Juvenile Court appointed Jeffrey Stone to represent Jasmine and Maria Sanchez to represent Ms. Dominguez. The Juvenile Court ordered DCW to locate Ms. Dominguez in Guatemala. Ms. Dominguez was eventually located in a rural town where she was living with a new boyfriend. By and through Ms. Sanchez, Ms. Dominguez waived her future appearances in the Juvenile Court since she was still in Guatemala. After conducting a background check and home study, DCW authorized Ms. Ortiz as the caretaker for Jasmine. Ms. Ortiz gladly accepted her legal designation by the Juvenile Court.

On February 28, 2014, the Juvenile Court conducted the adjudication and disposition hearings. The Juvenile Court sustained the findings of neglect and abandonment pursuant to Whittier Juvenile Code §§ 100(b) and (g), and declared Jasmine a dependent of the Juvenile Court. The Juvenile Court found that with respect to Whittier Juvenile Code § 100(b), Ms.

Dominguez failed to supervise Jasmine, and failed to provide Jasmine with proper medical treatment. With respect to Whittier Juvenile Code § 100(g), the Juvenile Court found that Ms. Dominguez did not provide proper financial support to Jasmine, and that Ms. Dominguez failed to maintain a parental relationship with Jasmine. Ms. Sanchez appeared without Ms. Dominguez and asked the Juvenile Court for reunification services, which the Juvenile Court ordered. The services ordered included a class on parenting medically fragile children and employment skill building. The Court also ordered Ms. Dominguez to make regular contact with Jasmine by phone or mail, and to maintain ongoing communication with the DCW social worker, Mr. Wells. The Court indicated Ms. Dominguez should do all of these things from Guatemala, unless she was able to return to the U.S.

In August 2014, the Juvenile Court held the six-month review hearing pursuant to Whittier law. Mr. Wells provided his report to the Juvenile Court, which stated he made contact with Ms. Dominguez, and that she was trying obtain a visa and return to the United States, but that it could take over a year to process. According to Mr. Wells, Ms. Dominguez truly wanted to reunite with Jasmine, but had difficulty complying with the court orders when the services she needed were not available in Guatemala. In his report, Mr. Wells also noted that Ms. Dominguez had not had any contact with Jasmine since July 2013. Mr. Wells tried working with Ms. Dominguez from afar to set up a call schedule with Jasmine, but it was difficult for Ms. Dominguez to find a reliable phone on a predictable schedule, and she had no internet access. Mr. Stone asked the Juvenile Court for an order authorizing SIJS for Jasmine. The Juvenile Court declined to make the order, and indicated it needed more time to determine whether Jasmine could be reunified with her mother. Pursuant to Whittier law, the Juvenile Court set the

matter for the 12-month hearing in February 2015, and warned Ms. Sanchez that Ms. Dominguez only had six more months to attempt reunification.

Between August 2014 and February 2015, Ms. Dominguez faced challenging circumstances in Guatemala. She had a difficult time finding work and occasionally went without food. She was living in a church sponsored by American missionaries and spoke with Jasmine on the church's phone three times in six month period. Ms. Dominguez still did not send funds to Jasmine. Ms. Dominguez also maintained contact with Mr. Wells and reported that she expected to get her visa by the end of the year and would return to the United States at that time. No employment classes were available, but Ms. Dominguez attended three classes on basic child rearing at the church.

At the 12-month hearing in February 2015, Ms. Dominguez appeared by phone. Mr. Wells reported the difficulties Ms. Dominguez had experienced and explained that although Ms. Ortiz was growing frustrated with Ms. Dominguez and her inability to provide support, Jasmine was doing well in Ms. Ortiz's home and at school. Jasmine confirmed this information when she testified that she liked living with Ms. Ortiz and that she felt she could get reliable health care while living in Ms. Ortiz's home. Jasmine also testified that she did not want to return to Guatemala where she regularly witnessed violence and did not attend a good school. Jasmine's doctor also provided a letter to the court stating that Jasmine would likely die if she returned to Guatemala since her medication was not available there.

The Juvenile Court found that Ms. Dominguez had made some progress. However, it also found that DCW made reasonable efforts toward reunification, and terminated Ms. Dominguez's reunification services. The Juvenile Court set a permanent plan for legal guardianship by Ms. Ortiz. Ms. Sanchez objected to the Juvenile Court's orders and stated on

the record that DCW's efforts were not reasonable because Ms. Dominguez was out of the country and due to no fault of her own, was not able to complete the reunification plan. The Court overruled the objection.

The Juvenile Court also made the required findings for SIJS pursuant to federal law, which are as follows:

1. The child is "dependent" upon the juvenile court or has been legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State juvenile court, within the meaning of 8 U.S.C. § 1101(a)(27)(J);
2. The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis found under State law within the meaning of 8 U.S.C. § 1101(a)(27)(J); and
3. It is not in the "best interest" of the child to return to his or her parents' previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(d)(2)(iii).

First, the Juvenile Court found that Jasmine is and has been a dependent child. Second, the Court referred to its ruling that Jasmine is a neglected and abandoned child pursuant to Whittier Juvenile Code §§ 100(b) and 100(g), and therefore cannot reunify with Ms. Dominguez. Third, the Juvenile Court found that it is in the best interest of Jasmine to remain in the United States where she can obtain life saving medical care.

Ms. Dominguez feared that due to the Juvenile Court's SIJS order, Jasmine would not ever return to Guatemala and that she would become a United States citizen and forget all about her heritage. Ms. Dominguez asked Ms. Sanchez to file an appeal addressing the Juvenile

Court's finding of abuse and neglect and its correlation to reunification with her, and the court's termination of her reunification services. Ms. Sanchez filed a timely appeal on March 15, 2015. To date, Jasmine remains in the care of Ms. Ortiz. Ms. Dominguez is still in Guatemala.

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**DISCUSSION**

Nations around the world struggle to deliver proper protection and health care to their citizens, including the most vulnerable among them: children. These children travel to the United States for proper care while immigration and familial predicaments loom on the horizon. Unfortunately for Ms. Dominguez, neither the Juvenile Court nor this Court can allow Jasmine to languish in legal quandary. Accordingly, this Court affirms the Juvenile Court's orders.

**1. Jasmine is a dependent neglected and abandoned child, and the SIJS order was proper.**

Ms. Dominguez contends that Jasmine's circumstances do not come within Whittier Juvenile Code §§ 100(b) and 100(g). She argues that she made an appropriate plan for Jasmine and that she did not create the circumstances that resulted in Jasmine's purported abandonment. Ms. Dominguez further contends that because Jasmine was neither neglected nor abandoned, that Jasmine does not qualify for SIJS. This Court disagrees.

In support of her arguments, Ms. Dominguez urges this Court to note the outcome in *S.D.*, 121 Cal. Rptr .2d 518 (2002). There, the California Court of Appeal held that although the mother was incarcerated, the social services agency did not prove the mother was unable to arrange for the care of her child. 121 Cal. Rptr. 2d at 524. The Court explained that at the jurisdictional hearing, the issue was not whether the mother had arranged for the child's care at the time of her incarceration, but whether she could. *Id.* at 525. Accordingly, the Court explained the juvenile court lacked any basis for assuming jurisdiction over the child when the



mother's sisters appeared before the court and expressed immediate willingness to care for the child. *Id.*

Ms. Dominguez contends that like the mother in *S.D.*, she arranged for Jasmine's care. While Ms. Dominguez correctly points out that Ms. Ortiz gladly accepted her role as caretaker for Jasmine, *S.D.* is distinguishable for at least two reasons. First, the mother in *S.D.* was in the country and could be located. Second, the child in *S.D.* was reported to be "healthy and happy." *Id.* at 520. Here, Ms. Dominguez was in Guatemala and could not be reached, and Jasmine was in the hospital facing very serious health concerns. Therefore, unlike the mother in *S.D.*, because Ms. Dominguez could not be reached, Ms. Dominguez also could not arrange for Jasmine's care at the time of the jurisdictional hearing. It was critical for Jasmine to have a proper caretaker at that time and she did not.

Ms. Dominguez argues that because her visa was near expiration, she had no choice but to leave Jasmine, and that she did not create the circumstances that resulted in the Juvenile Court's jurisdiction. The father in *Oreoluwa*, made a similar and equally unsuccessful argument. 116 A.3d 400 (Conn. App. Ct. 2015). There, the father, who lived in Nigeria, had his parental rights terminated on the grounds that he abandoned the child and had no ongoing parent-child relationship. *Id.* On appeal, the father argued that he did nothing to create separation or lack of parental involvement. *Id.* at 407. The father claimed that the mother traveled to the United States to give birth to their child, that the child could not travel due to his medical condition, and that the father could not obtain a visa to travel from Nigeria to the United States. *Id.* at 409. The Connecticut court acknowledged that the father demonstrated some interest and concern for his child, but that the statutory standard in Connecticut is not whether the parent has shown "some" interest in the child. *Id.* at 409. Rather, the court explained that absence from the country does

not excuse a parent from doing all that he can to “demonstrate a reasonable degree of interest, concern and responsibility” in his child. *Id.*

Here, like the father in *Oreoluwa*, Ms. Dominguez only showed “some” interest in Jasmine. Indeed, she traveled from Guatemala and initiated arrangements for her medical care, but like the father in *Oreoluwa*, Ms. Dominguez did not have a realistic plan for Jasmine’s future care. Moreover, Ms. Dominguez only had limited correspondence with Jasmine and at various times she did not even inquire about Jasmine’s health. While this Court acknowledges that Ms. Dominguez’s financial situation and ability to communicate may have been compromised at times, it appears she made little effort, if any at all to support Jasmine from afar. Most significantly, she left Jasmine without any notice. At that time, no one but Ms. Dominguez brought about her absence. These facts support the Juvenile Court’s finding that Ms. Dominguez abandoned Jasmine.

Additional law from other jurisdictions supports the finding that Jasmine has been abandoned. For instance, California law states that a child may be freed from parental custody or control where the “child has been left by both parents or the sole parent in the care and custody of another person for a period of six months without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child.” Cal. Fam. Code § 7822(a)(2). “The. . . failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents. In the event that a guardian has been appointed for the child, the court may still declare the child abandoned if the parent or parents have failed to communicate with or support the child. . . .” Cal. Fam. Code § 7822(b). Thus, the

elements of abandonment are: (1) the child must be “left” by parent in care and custody of another person for a period of six months; (2) child must be left without any provision for support or without communication from parent; and (3) parent must have acted with the intent to abandon child. *In re Jacklyn F.*, 7 Cal.Rptr.3d 768, 772 (2003).

First, Jasmine was left in the care and custody of Ms. Ortiz for the last five years, which exceeds the six-month period allocated by *Jacklyn F.* and Whittier Juvenile Code § 100(g). More recently, she was left in the care and custody of Ms. Ortiz pursuant to an order by the Juvenile Court.

Second, Jasmine has largely been without provision, support, or communication from Ms. Dominguez. Their last communications by phone were mere “token communications.” *Adoption of Oukes*, 92 Cal.Rptr. 390, 395 (1971). In *Adoption of Oukes*, Appellant, mother of the children, opposed the adoption of her children by relatives. *Id.* at 391. On appeal, mother contended that the finding that she abandoned her children was not supported by the evidence. *Id.* The Court disagreed, and reasoned that three communications by letter and phone with the children over a one year period constituted token communications and thus supported the finding of abandonment. *Id.* at 395. The Court further noted that emotional and mental strain does not constitute a legal excuse for failure to communicate. *Id.* at 396. Here, Jasmine had little to no communication for the last several years with Ms. Dominguez. Regardless of the reason for this lack of communication, the evidence is presumptive of the intent to abandon. Cal. Fam. Code § 7822(b); *Adoption of Oukes*, 14 Cal. App. 3d. at 493.

Finally, the third requirement under *Jacklyn F.* requires a showing of the intent to abandon. 7 Cal.Rptr.3d at 772. In order to constitute abandonment there must be an actual desertion, accompanied with an intention to entirely sever, so far as it is possible to do so, the

parental relation and throw off all obligations growing out of the same. *Id.* at 772. Here, this requirement is established through evidence that Ms. Dominguez failed to communicate with Jasmine on a regular basis and because she left Jasmine in the middle of the night without any notice. This is evidence of desertion.

Ms. Dominguez argues that Jasmine was neither neglected nor abandoned, and that Jasmine does not qualify for SIJS. Ms. Dominguez also argues that even if Jasmine was neglected or abandoned, those circumstances no longer prevent her reunification pursuant to the second prong of the required SIJS findings. This Court disagrees. Once the Juvenile Court took jurisdiction and found that Jasmine was neglected and abandoned, the Juvenile Court properly concluded reunification was not viable. The Juvenile Court then turned its attention to whether it was in Jasmine's best interests to return to her home county and found that it is not. Immigration policy considerations and their final adjudication in a particular case are beyond the scope of what a state juvenile court is required to decide upon. *In re Leslie H.*, 168 Cal.Rptr.3d 729, 738, 351 (2014),

**2. Reunification services were properly terminated where DCW used reasonable efforts to reunify Jasmine and Ms. Dominguez.**

Ms. Dominguez argues that if the Juvenile Court's ruling that Jasmine was neglected and abandoned was correct, then DCW's efforts at reunifying her with Jasmine were not sufficient, and that her reunification services were terminated in error. Ms. Dominguez states that DCW should have provided her with funds to use the phone and send letters, and assisted her with obtaining a visa by providing immigration counsel. Ms. Dominguez also states DCW should have offered her required classes online. This Court disagrees.

In *Oreoluwa*, the father made similar and unsuccessful arguments. 116 A.3d at 405. As this Court has stated, it is not persuaded that *Oreoluwa* is applicable to this case. In *Oreoluwa*, the father believed that the social services agency should have (1) provided him with immigration counsel; (2) facilitated Skype visitation; (3) investigated the possibility of reunification in Nigeria; and (4) established a reunification plan that he would be able to satisfy. *Id.* The Court disagreed, stating that it was unaware of any authority that requires the social services agency to provide immigration counsel. Moreover, the Court explained that the social services agency did not have the equipment necessary for Skype visitation. Here, while the office may have had the technical abilities to host a Skype conversation, Ms. Dominguez could not be located on countless occasions, nor did she have access to a reliable phone or computer. With respect to reunification in Guatemala, Jasmine's doctor testified that the medical care Jasmine needs is not available in Guatemala and that if she returned there, she would likely die. Therefore investigating the possibility of Jasmine returning to Guatemala would have been futile. The law does not require a futile act. *Id.* at 407. Finally, like the court in *Oreoluwa*, this Court cannot identify a location for reunification other than this country, especially given Jasmine's medical condition. The juvenile court's finding that DCW made reasonable efforts was proper.

In support of her position that DCW did not make reasonable efforts, Ms. Dominguez points to *J.B. v. DeKalb County Dept. of Human Resources*, 12 So.3d 100 (Ala. Civ. App. 2008). Ms. Dominguez states that like the father in *J.B.*, she was similarly delayed in obtaining a visa and therefore should not have her services terminated. However, this Court finds the facts of *J.B.* inapposite to this case. In *J.B.*, the father went to Guatemala to obtain his visa, and instead of it taking 20 to 60 days as he anticipated, it took 9 months. *Id.* at 104. While the father was in Guatemala, he worked and stayed with friends. *Id.* The father also maintained contact with his

children from afar. *Id.* at 122. The Alabama appellate court reversed the juvenile court's order terminating parental rights, finding that the social services agency had a duty to use reasonable efforts to reunite the family, and that it could have kept the children in foster care until the father was able to return. *Id.* at 116.

Here, unlike the father in *J.B.*, Ms. Dominguez was unable to articulate when she could get a visa. She had limited work in Guatemala and did not maintain meaningful contact with Jasmine. Moreover, unlike the father in *J.B.*, Ms. Dominguez did not previously reside in the U.S. nor did she seem to have a long term intention to live in this country. It's unclear to this court why Ms. Dominguez made the evasive decisions that she did, but Jasmine needs a stable and predictable environment, where she can finish school and get the health care she needs. Legal guardianship under Ms. Ortiz and the SIJS order permitting her access to ongoing health care in this country offer her that and much more.

Affirmed.

**STATE OF WHITTIER  
SUPREME COURT**

**MARTA DOMINGUEZ**

**No. 923-2015**

**v.**

**STATE OF WHITTIER,  
Ms. Kathryn Candler, Director of the  
Whittier Department of Child Welfare**

**Certiorari to the State of Whittier  
Court of Appeal**

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**ORDER GRANTING CERTIORARI**

November 16, 2015

1. Did the Juvenile Court err when it took jurisdiction of Jasmine, adjudicated her neglected and abandoned, and made an order for Special Immigrant Juvenile Status?
2. Did the Juvenile Court err when it found DCW made reasonable efforts toward reunification and terminated Ms. Dominguez's reunification services?

IT IS SO ORDERED.

## STATE OF WHITTIER – JUVENILE CODE

### § 100 - Conditions of Abuse or Neglect

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adudge that person to be a dependent child of the court:

- (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.
- (b) The child 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, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate and appropriate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.
- (c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.
- (d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, 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.
- (e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause



permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse.

- (f) The child's parent or guardian caused the death of another child through abuse or neglect.
- (g) The child has been left without reasonable support; the parent has failed to maintain regular contact with the child, including normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.
- (h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.
- (i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.
- (j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

As used in this section, "guardian" means the legal guardian of the child.