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March 20, 2014

Honorable Chief Justice Tani Cantil-Sakauye and
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *Gonzalez v. Santa Clara County Department of Social Services*
Case No. S216797 [(2014) 223 Cal.App.4th 72]
6th Juvenile No. H038241 / SCSC No. 1-11-CV-204141
REQUEST FOR DEPUBLICATION

Dear Chief Justice and the Associate Justices of the California Supreme Court:

The California Association of Counties (CSAC) is a non-profit corporation with the primary purpose of representing the interests of its 58 member county governments before the California Legislature, administrative agencies, and state courts. CSAC respectfully requests that this Court order the depublication of the above-referenced opinion issued by the Sixth District Court of Appeal (appellate court), filed and certified for publication on January 21, 2014, for the reasons stated in this request. In addition to making its own request, CSAC supports Santa Clara County's request for depublication filed on March 19, 2014.

Factual and Procedural Summary

On October 8, 2013, the appellate court filed and certified for publication its opinion in *Gonzalez v. Santa Clara County Dept. of Social Services* (2013) 220 Cal.App.4th 326. After granting a petition for rehearing, the appellate court issued the opinion that is the subject of this request for depublication on January 21, 2014. The court's holding of which included the following language:

> We conclude that the parental privilege to impose reasonable physical discipline upon a child *must be incorporated* into CANRA's definitions of what constitutes "'willful harming or injuring of a child'" (Pen. Code, § 11165.3) and "'unlawful corporal punishment or injury'" (Pen. Code, § 11165.4). It follows that Mother's conduct here was not reportable child abuse if it constituted the reasonable imposition of discipline.

(*Gonzalez v. Santa Clara County Department of Social Services* (2014) 223 Cal.App.4th 72, 90, emphasis added.) The court then went on to delineate a three-part test to determine whether or not the parent's action constituted a reasonable imposition of discipline:

> As we have said, a successful assertion of the parental disciplinary privilege requires three elements: (1) a genuine disciplinary motive; (2) a reasonable occasion for discipline; and (3) a disciplinary measure reasonable in kind and degree. Here there is no room for serious debate about the first and second elements.

(*Gonzalez v. Santa Clara County Department of Social Services, supra*, 223 Cal.App.4th at p. 91.) Based on the test it set forth in this case, the court found that "[t]he only question presenting any difficulty is whether the measure actually applied—spanking with a wooden spoon, with resulting bruises—was reasonable in kind and degree. To overlook as harmless the trial court's failure to entertain the reasonable discipline privilege, it would have to appear as a matter of law either that a wooden spoon was an unreasonable means to administer the spanking, or that it was applied with excessive force." (*Gonzalez v. Santa Clara County Department of Social Services, supra*, 223 Cal.App.4th at 92.) The court concluded that "[w]e cannot say that the use of a wooden spoon to administer a spanking necessarily exceeds the bounds of reasonable parental discipline, . . .[n]or do we think that the infliction of visible bruises automatically requires a finding that the limits of reasonable discipline were exceeded." (*Ibid.*)

The Opinion Should Be Depublished

CSAC requests depublication of the opinion in *Gonzales v. Santa Clara County Dept. of Social Services, supra*, for two reasons: (1) the court improperly reweighed evidence to arrive at a legal conclusion, which is improper under the law; and (2) in enunciating its reasonable parental discipline standard, this decision contravenes existing statutes and long-standing case law.

On the first point, the Court of Appeal acknowledged that as to the factual findings in this case, the court was required to apply the substantial evidence rule, and uphold the trial court's findings if supported by substantial evidence. (Gonzalez, supra, 223 Cal.App.4th at p. 85 (citing Roy v. Superior Court (2011) 198 Cal.App.4th 1337, 1346). Indeed, in an administrative mandate cases, the reviewing court does not reweigh the evidence or the credibility of witnesses. California Youth Authority v. State Personnel Board (2002) 104 Cal.App.4th 575, 584. However, the court clearly reweighed the credibility of the social worker's testimony in this case. (Gonzalez, supra, 223

Cal.App.4th at pp. 94, 99-101.) In so doing, the court overstepped its authority as a reviewing court, creating confusion as to the proper standard for reviewing evidence in an administrative mandate appeal. As the County of Santa Clara notes in its depublication request, this error is particularly problematic in light of the ample case law finding that social worker testimony and assessments are entitled to greater weight given their training and expertise. (Santa Clara Co. Depub. Request, p. 5 (SCC Request).)

The opinion also contravenes the law on appropriate discipline. In addition to its use in CANRA cases, it is not a stretch of the imagination that there will be efforts to import the "reasonable parental discipline" exception in juvenile dependency cases statewide. CSAC is concerned that, as a result of such application, vulnerable children in this State may not be offered the protection they are entitled to under the law to protect them from abuse by their parents or guardians.

In its request for depublication, respondent Santa Clara County Department of Social Services correctly argues that the opinion in this case narrows the definition of child abuse found in both statutes and case law to the detriment of the children the laws were designed to protect. CSAC will not restate Santa Clara County's well-reasoned argument regarding the inappropriately subjective nature of the test proposed by the appellate court. (SCC Request, pp. 2-3.) Welfare and Institutions Code section 300, subdivision (a) addresses "serious physical harm," a subdivision that describes many of those children who are the subject of substantiated allegations under the Child Abuse and Neglect Reporting Act's (CANRA) "willful harming or injuring of a child" and "unlawful corporal punishment or injury." (Welf. and Inst. Code §300, subd. (a); Pen. Code, §§ 11165.3, 11165.4.) Section 300(a) specifically excludes only "reasonable and age-appropriate spanking of the buttocks where there is no evidence of serious physical injury." (Welf. and Inst. Code, § 300, subd. (a).) The appellate court discusses at great length a variety of criminal cases in which courts have inserted a "reasonable discipline" exception into the statute. But little if any consideration is given to a significant line of authority in California and other states finding that use of an object to hit a child, especially leaving marks or bruises, crosses the line from reasonable discipline to child abuse. While acknowledging those authorities, the opinion in this case does not make an effort to distinguish them, but instead forges ahead to a contrary conclusion. (*Gonzalez v. Santa Clara County Dept. of Social Services, supra*, 223 Cal.App.4th at 92, citing to 80 Ops.Cal.Atty.Gen. 203, 204 (1997); *In re Adam D.* (2010) 183 Cal.App.4th 1250, 1254, 1257; *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 291.)

The only authorities cited to support that leaving bruises or other lasting marks from striking the child with an object did not constitute a crossing of the line from discipline to abuse are from other states. (See *In Interest of J.P.* (1998) 294 Ill.App.3d 991, 1005; *Johnson v. Smith* (Minn.Ct.App.1985) 374 N.W.2d 317, 320.) This reliance is

necessary to the court's incorrect conclusions, as in California it has long been the law that using an object to strike your child and leaving lasting marks or bruises is not reasonable discipline, even for children who do not listen, are "boy crazy," and seem headed towards involvement with "gangs." (*Gonzalez v. Santa Clara County Dept. of Social Services, supra, 223 Cal.App.4th at 92.*) "[A]n allegation that a child has suffered serious physical harm inflicted nonaccidentally by a parent...is sufficient to establish jurisdiction under section 300, subdivision (a)." (*In re David H.* (2008) 165 Cal.App.4th 1626, 1644.)

In the juvenile dependency court scheme, serious physical abuse is different from severe physical abuse or cruelty. (§ 300, subds. (a), (e), (i).) In *In re Mariah T.* (2008) 159 Cal.App.4th 428, the appellate court declined to find the term "serious physical harm" too vague and therefore unconstitutional, concluding that using a belt that left deep purple bruises on a three-year-old child was sufficient to establish jurisdiction. (*Id.* at pp. 437-438.) This result was necessary because a parent who seriously abuses or allows the abuse of their child abandons or contravenes their parental role. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 530.)

"Spanking" is defined "[a]n act of slapping, especially on the buttocks as a punishment for children...," or "to strike especially on the buttocks with the open hand."[1] It is not hitting with an object, such as a wooden spoon leaving visible bruises. The Legislature has specifically excluded from the definition of serious physical harm "reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury." (§ 300, subd. (a).) By only enumerating reasonable and age-appropriate spanking as exception to such abuse, the Legislature clearly did not intend to exclude hitting with a wooden spoon or other object from this subdivision. While the appellate court's holding in this case concerns substantiated allegations under CANRA, which is contained in the Penal Code, if it was necessary to go outside the plain language of the statute to make a determination in this case,[2] a close reading of similar statutes contained in the Welfare and Institutions Code contradicts the assertion that use of an object as a means of administering physical discipline is permissible. As a result, the holding that "[w]e cannot say that the use of a wooden spoon to administer a spanking necessarily exceeds the bounds of reasonable parental discipline . . .[n]or do we think that the infliction of visible bruises automatically requires a finding that the limits of reasonable discipline were exceeded," contravenes California law. (*Gonzalez v. Santa Clara County Department of Social Services, supra*, 223 Cal.App.4th at p. 92.)

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[1] http://www.oxforddictionaries.com/us/definition/american_english/spanking (March 11, 2014); http://www.merriam-webster.com/dictionary/spanking (March 11, 2014.)

[2] If it was necessary to apply a privilege to findings under CANRA for reasonable parental discipline, CSAC asserts that it was not necessary to hold that a parent can use an object to hit a child, leave lasting marks, and still reasonably assert the discipline privilege, and it is that holding that is contravened by statute and case law.

Conculsion

This opinion weakens the ability of child protection agencies statewide to protect at-risk children, and contravenes California statutory and case law. CSAC urges the depublication of this opinion.

Respectfully Submitted,

Jennifer B. Henning, SBN 193915
Counsel to the California State Association of Counties

Proof of Service Enclosed

Proof of Service by Mail

Gonzalez v. Santa Clara County Department of Social Services
Case No. S216797

I, MARY PENNEY, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **DEPUBLICATION REQUEST** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
Veronica M. Gonzalez : Plaintiff and Appellant	Seth Forrest Gorman Law Office of Gradstein & Gorman 80 Stone Pine Road, Suite 101 Half Moon Bay, CA 94019-1787
Santa Clara County Department of Social Services, et al : Defendants and Respondents	Harrison D. Taylor Office Of The County Counsel 373 W. Julian St., Suite 300 San Jose, CA 95110-2319 Danny Yeh Chou Office of the County Counsel 70 West Hedding Street, East Wing, Ninth Floor San Jose, CA 95110-1705
Court of Appeal	Court of Appeal Sixth Appellate District 333 W. Santa Clara St, #1060 San Jose, CA 95113-1717
Trial Court	Hon. Mark H. Pierce Santa Clara County Superior Court 191 N. First Street San Jose, CA 95113-1090

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that 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 prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 20, 2014, at Sacramento, California.

MARY PENNEY