



“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

APPEALS – NOTICE OF APPEAL

In re P.C. – ordered published Mar. 3, 2006, Fourth Dist., Div. One

Docket No. D046406

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D046406.DOC>

In an appeal from termination of parental rights, the department claimed that a mother's notice of appeal was untimely since it was filed “three days late.” Mother countered that because her notice of appeal was filed within 20 days of father's notice of appeal her filing was timely. Agreeing with mother, the court of appeal cited Cal. Rules of Court, rule 37(d)(4) which “extends the time for another party to file an appeal from the same judgment for 20 days after notification of the first notice of appeal...” in juvenile appeals. NOTE: This rule does not add 20 days to the appellate filing period, it merely allows for cross-filing a notice of appeal within 20 days of another party's notice of appeal. For example, if father had filed a notice of appeal 10 days after the termination of parental rights, the period of time available for mother to file a notice of appeal would have ended 60 days after the judgment since 20 days after notification of the initial filing was still within the 60 day filing period. (DE)

ICWA – TRANSFER TO TRIBAL COURT

In re M.A. – filed Mar. 9, 2006, Third Dist.

Docket No. C049810

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C049810.DOC>

A federally-recognized tribe petitioned for transfer of a dependency case involving an Indian child to its tribal court (the child was not domiciled on the reservation). The agency objected, arguing the transfer violated the ICWA because the Secretary of the Interior had not approved the tribal court. The court of appeal held that the approval of the Secretary of the Interior was not required. Under 25 U.S.C. § 1911(b) and Cal. Rules of Court, rule 1439(c)(2), the juvenile court was required to transfer the case where neither parent objected, the tribal court had not declined jurisdiction, and there was no good cause to reject the transfer. (CS)

PARENTAGE – PRESUMED FATHERS - STANDING

In re Eric E. – filed March 2, 2006, Second Dist., Div. Eight

Docket No. B173908

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B173908.DOC>

Children were detained from mother. Biological father Gene (whose name was on children's birth certificate, and who had signed a voluntary declaration of paternity) and stepfather Robert both sought presumed father status. Juvenile court denied presumed father status to both men, but ordered that Gene be offered reunification services. Gene did not comply with the case plan, tested positive for drugs, and did not contact DCFS to set up visits with the children. The court terminated reunification services to Gene after 9 months. Meanwhile, Robert appeared at all the hearings and complied with his case plan in the dependency case concerning his own children. After several clean drug tests, he was given custody of his children and stepchildren. At the Welf. & Inst. Code § 366.26 hearing, Gene and Robert again both requested presumed father status. The court again denied presumed father status to Gene, but granted presumed status to Robert because the children were bonded to him and he had acted as a father. Gene appealed.

The Court of Appeal held that a request for presumed father status after the termination of reunification services must be made through a § 388 petition. The juvenile court properly denied Gene's motion because he did not meet the § 388 criteria requiring a change of circumstances and that any requested order serve the best interests of the child. Also, as an alleged father Gene did not have standing to challenge the court's order granting Robert presumed father status. (MM)

WELF. & INST. CODE § 387 PETITION

In re Javier G. – filed March 7, 2006, Fourth Dist., Div. One

Docket No. D046520

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D046520A.DOC>

A Welf. & Inst. Code § 387 petition may be sustained where the facts support that the previous disposition has not been effective in the *rehabilitation* of the child. Cal. Rules of Court 1430(c) and 1431(a), which appear to limit § 387 petitions to "protection" of a child, are inconsistent with the plain language of § 387, which includes the term "rehabilitation." Substantial evidence supported the juvenile court's finding under § 387 that the previous disposition (home of parent – mother) had not been effective in the protection or rehabilitation of mother's two teenage sons. The teens had sexually abused their sister and physically abused their younger brother while in the mother's custody, and a psychologist opined that both boys needed residential placement and intensive therapeutic services. Removal from parental custody was warranted under § 361(c)(3), as the boys were suffering severe emotional damage and there were no reasonable means to protect their *emotional* health without removal. Previous counseling had been ineffective and the mother was unable to provide the boys with sufficient structure to ameliorate their behaviors. Substantial evidence also supported the finding that the agency had made reasonable efforts to prevent removal. By the time the § 387 petition was sustained, the family had already received 18 months of in-home and counseling services. (CS)

NON-DEPENDENCY CASES OF INTEREST

ADOPTION -- FAMILY CODE §§ 7822, 8802

In re Michael R. – filed February 28, 2006, Fourth Dist., Div. Three

Docket No. G035622

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G035622.DOC>

Birth mother Tammy R. placed her child for adoption through an agency, but later rescinded her relinquishment when she found out that the adoptive parents were divorcing and would not be adopting jointly. (Fam. Code § 8700(h) allows a birth parent to rescind her relinquishment within 30 days of being notified that the specific persons named in the relinquishment will not adopt the child.) Adoptive mother, Sheryl M., obtained temporary guardianship of child, and filed an independent adoption petition. Family court dismissed this petition for lack of standing. Affirmed. Only the persons listed in Fam. Code § 8802 have standing to file an independent adoption petition: 1) persons with whom the child is placed for adoption; 2) legal guardians for over 1 year; and 3) legal guardians for over 6 months if the child is found to be abandoned under Fam. Code § 7822. Tammy's relinquishment of her child to an agency was not "abandonment" under § 7822. After Tammy rescinded her relinquishment under § 8700(h), the agency was required to return the child to her and Sheryl had no standing to petition for adoption. (MM)

OTHER LEGAL DEVELOPMENTS

New or Revised Los Angeles County Department of Children and Family Services Policies of Significance –

Procedural Guides:

0100-520.10 Evaluating a Prospective Caregiver

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052010.doc>

This procedural guide has been revised to include updated state regulations regarding the evaluation and approval of relative/non-relative caregivers' homes by the Kinship Support Division of DCFS. (DE)

1200-500.00 Nondiscrimination of Clients, Out-Of-Home Caregivers and Adoptive Parents

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/1200/12005000.doc>

This new procedural guide recognizes that children, birth families, caretakers, and adoptive parents will be served regardless of race, color, religion, sex, national origin, political affiliation, handicap, age, marital status, or sexual orientation. (DE)

E030-0530 Relative (Youakim) Foster Care

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E030/E0300530YPolicyUpdated306.doc>

Outline of procedure for eligibility workers to follow in determining whether a relative caretaker can receive funding under Youakim. (DE)

For Your Information (FYIs):

06-07 REV #2 Wraparound Services

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0607WraparoundServicesRev2.doc>

This FYI requires each DCFS office to develop a wraparound referral process for children facing placement in RCL 12 or above care. Children in RCL 12 or above care for more than 6 months and children leaving an RCL 12 or above placement shall also receive wraparound referrals. Implementation of this FYI began on March 1, 2006. (DE)