



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA -- LIMITED REVERSAL FOR DEFECTIVE NOTICE

In re Francisco W.—filed May 17, 2006, Fourth Dist, Div. One

Docket No. D047094

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D047094.DOC>

Father appealed the termination of his parental rights alleging that ICWA notice had been improper. Reversed. The agency had sent three sets of notices, but none contained sufficient family history information for the Cherokee tribes or BIA to determine whether the child was eligible for tribal membership, even though the agency could have obtained the information from the paternal grandmother. The appellate court also held that invalid ICWA notice warranted only a limited reversal and remand with instructions to the juvenile court to correct the notice defect and to reinstate the termination order if no tribe intervened; a new Welf. & Inst. Code § 366.26 hearing was not required or appropriate, given the public policy favoring prompt resolution of dependency cases. Any postjudgment changes affecting a child's adoptability could be remedied by reinstating parental rights under § 366.26(i)(2). (CS)

LEGAL GUARDIANSHIP – WIC §§ 360 & 361.4

Rhonda W. v. Superior Court (In re Summer H.) – filed May 26, 2006, Second Dist., Div. Seven

Docket No. B189009

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B189009.DOC>

Child was born drug-exposed, and placed on hospital hold. Mother asked that child be placed with aunt, who had probate guardianship of child's sibling. DCFS refused to place child with aunt because of her criminal history, and refused to grant a waiver. Mother filed a Welf. & Inst. Code § 360 motion for guardianship. Court denied motion, ruling that § 361.4 applies and court could not grant guardianship since DCFS had denied the aunt a waiver. Mother filed writ petition. Writ granted. The court of appeal analyzed the statutory language and legislative history of §§ 360 and 361.4, and held that appointment of a legal guardian under § 360 is not subject to the criminal history restrictions of § 361.4. The juvenile court, at disposition, may grant a § 360 guardianship based on a finding that the guardianship is in the child's best interests after considering the required DCFS assessment (which

includes a criminal history screening, among other factors), even if the prospective guardian has a criminal conviction. (MM)

POST-TERMINATION PLACEMENT DECISIONS

In re Shirley K. – filed Jun. 5, 2006, Fourth Dist., Div. One

Docket No. D047554

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D047554.DOC>

The child was placed with her grandparents shortly after detention, when she was six weeks old. Post-termination of parental rights, the agency removed the child from the grandparents after the grandmother reported her teenage daughter to the police for using drugs. The social worker also cited the grandfather's alcohol use, even though the agency had known about it for several years. The grandparents filed a Welf. & Inst. Code § 388 petition requesting return or at least liberal visitation. At the hearing, they presented evidence that they had remedied the problems leading to removal. A bonding study also concluded that the child was very attached to her grandparents and would be damaged if contact was terminated. The juvenile court denied the petition, finding that the agency had not abused its discretion and that it was "irrelevant" whether or not the court agreed with the agency's decision. The grandparents appealed and the child joined. Reversed. First, the court held that § 388 orders made after termination of parental rights are appealable and that § 366.28 writ procedures do not apply. Next, the appellate court found that the juvenile court erred by minimizing its role in oversight of post-termination placement decisions. While the juvenile court is limited to reviewing the agency's post-termination placement decisions for abuse of discretion, it has a duty to ensure that the agency considers a child's best interests when making such decisions, especially when a child is removed from a long-term caretaker to whom the child is bonded. The evidence supported that the agency had abused its discretion in this case by refusing to consider the grandparents' efforts to remedy their problems in light of the child's bonded relationship with them, the excellent care they had provided for 20 months, and the child's fundamental right to stability. There was also evidence that the social worker was not objective. The case was remanded for the juvenile court to determine whether it was in the child's best interests to return her to her grandparents or grant liberal visitation. (CS)

STANDING TO REQUEST DESIGNATION AS INDIVIDUAL IMPORTANT TO CHILD

Amber R. v. Superior Court -- filed May 19, 2006, Fourth Dist., Div. Three

Docket No. G035611

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G035611.DOC>

Biological mother whose parental rights had been terminated filed a Welf. & Inst. Code § 388 petition asking to be designated as an individual important to the child under § 366.3(e) and requesting visitation. The juvenile court found that the mother lacked standing to bring the § 388 petition, which was opposed by the 15-year-old child. The appellate court affirmed, finding that while the agency has the power to recommend, and the child has standing to request, that a person be designated as "important to the child" under § 366.3, a parent whose rights have been terminated does not. The court did not decide whether a biological parent whose rights had been terminated could nevertheless be designated as an important individual if the *agency or child* requested the designation. The court also held that § 388 does not apply to a review hearing following termination of parental rights (at least where the petitioner is a former parent who seeks visitation, as this amounts to an impermissible collateral attack on the termination order in violation of § 366.26(i)(1)). (CS)

SIBLING RELATIONSHIP EXCEPTION – WELF. & INST. CODE § 366.26(c)(1)(E)

In re Valerie A. – filed May 30, 2006, Fourth Dist., Div. One

Docket No. D047748

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D047748.DOC>

Adriana, older half sister to twins, Valerie and Victoria, was adopted by maternal grandmother before the twins were detained from the mother. The juvenile court found Adriana was not a sibling within the meaning of Welf. & Inst. Code § 366.26 (c)(1)(E). Reversed. The appellate court found that no dependency statutes declare that a child will lose status as a “sibling” when the child has been adopted. The appellate court also noted the existence and enforcement of post-adoptive sibling contracts and stated the Legislature’s intent to preserve, to the greatest extent possible, the relationships and contacts between siblings. Even after her adoption, therefore, the appellate court found Adriana qualified as a sibling of the twins within the meaning of subdivision (c)(1)(E) and remanded the case for a new permanency planning hearing. (JC)

NON-DEPENDENCY CASES OF INTEREST

DUAL JURISDICTION – WELF. & INST. CODE § 241.1

In re Henry S. – filed Jun. 8, 2006, Fifth Dist.

Docket No. F048791

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F048791.DOC>

Police attempted to find and detain 14-year-old Henry and his 10-year-old brother after arrest of their parents. Henry fled in his father’s car, and led police on a high speed chase which ended in a collision with police cars. DA filed a § 602 petition. Henry’s counsel requested Welf. & Inst. Code § 241.1 assessment, because the children had extensive history of abuse. Counsel asked for a full hearing on § 241.1 petition, at which he could present evidence and cross-examine the CSW and probation officer who prepared the § 241.1 report. Court denied this request, held the hearing with only parties and counsel present, and declared Henry a delinquent. Affirmed. Court of appeal agreed with Henry that his challenge to court’s determination under § 241.1 is immediately appealable, but rejected it on the merits. Henry has no statutory right to a full hearing. Section 241.1 does not require a hearing at all, and if the court does set a hearing, Rule 1403.5 of the Cal. Rules of Court requires only that the parties and their attorneys be heard. Henry also has no constitutional right to a full hearing. Basic due process requirements are satisfied by the fact that the court considered the § 241.1 assessment and Henry’s counsel’s arguments, and by the fact that Henry will have the right to a full trial in his delinquency case. (MM)

FAMILY LAW – MOVE AWAY ISSUES

In re Marriage of Seagondollar – filed May 25, 2006, Fourth Dist., Div. Three

Docket No. G035270

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G035270.DOC>

Mother and father had joint custody of their four children. Family court later gave mother sole custody and allowed her to move the children out of state. Reversed. In *In re Marriage of Brown & Yana* (2006) 37 Cal. 4th 947, the Ca. S.Ct. held that the parent with primary custody has the presumptive right to change the residence of the child, and the noncustodial parent must make a threshold showing of detriment to get a hearing on a move-away issue. The court of appeal distinguished *Marriage of Brown & Yana*, and held that before allowing a parent to move children out of state where the parents have joint custody, the family court must hold a hearing. (MM)

FAMILY LAW – PARENTAGE

Charisma R. v. Kristina S. – filed Jun. 9, 2006, First Dist., Div. Five

Docket No. A108213

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A108213.DOC>

Court of appeal reversed and remanded trial court's dismissal of parentage action by former domestic partner of birth mother, in light of *Elisa B.* (2005) 37 Cal.4th 108. On remand, trial court must determine whether Charisma received the child into her home and held her out as her natural child, which would make her a presumed parent under Fam. Code § 7611(d). Then, trial court must determine whether this is an "appropriate case" to allow the presumption to be rebutted by evidence that Charisma is not a biological parent, by considering: whether Charisma participated in causing the child to be conceived, with the understanding that she would be a co-parent; whether she accepted the rights and duties of parenthood; whether there are any competing claims to be the child's second parent; and whether there are any other facts that would justify rebutting the presumption. Fact that birth parent opposes parentage action is not controlling. (MM)

FAMILY LAW – RESTRAINING ORDERS

Ross v. Figueroa - filed May 19, 2006, Second Dist., Div. Seven

Docket No. B182738

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B182738N.DOC>

In domestic violence case, family court denied respondent Figueroa's request for a continuance and granted three-year restraining order. Reversed. Court of appeal held that he was entitled to automatic continuance under Fam. Code § 243(e), since he was not given proper notice. Remanded for new hearing to allow Figueroa an opportunity to present evidence to refute the allegations in the petition. (MM)

UNPUBLISHED CASES OF INTEREST

The following are unpublished and may not be cited as legal authority (Cal. Rules of Court 977(a)):

Welf. & Inst. Code § 388

DCFS v. Superior Court (Kiley G.) – filed Jun. 2, 2006, Second Dist., Div. Two

Docket No. B189512

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B189512.DOC>

Child was placed with MGPs and siblings at birth. Mother was incarcerated. Mother filed Welf. & Inst. Code § 388 petition seeking an order placing child with mother at prison mother-infant program. Mother alleged changed circumstances including two months in this program, 240 hours of drug rehab and 20 hours of parenting classes while in jail. Court granted mother's petition, partly because of court's disapproval of MGF's negative comments about mother at prior hearings, results of 730 eval. that court had ordered on MGF, and perception that MGF was impeding parents' visitation. DCFS filed writ petition. Writ granted. Order granting § 388 was not based on a discernable and articulated finding of changed circumstances that were in the best interests of the child, and relied on facts not in evidence. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0070-548.06. Emergency Response Referrals Alleging Abuse Regarding Children Residing in the Home of a Parent Who Are Under DCFS Supervision

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007054806ERInHome.doc>

This procedural guide sets forth procedures for staff to follow when a referral is received regarding a child residing in the home of a legal guardian or parent. (JC)

0100-520.10 (REV.) Evaluating a Prospective Caregiver

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052010EvalCaregiversV0506.doc>

This revised procedural guide includes updated State regulations and provides procedures for evaluating and approving a prospective relative/non-relative caregiver's home by the Kinship Support Division. (JC)

0100-520.70 Exemptions For Relatives, Non-Relative Extended Family Members, and Prospective Guardians with Criminal History Records

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052070Exmptv0506.doc>

This procedural guide informs CSWs that a criminal record exemption may be granted by the department for an individual who is currently on probation and can provide sufficient proof that the probationary period(s) is informal, unsupervised and that there is no probation officer assigned. (JC)

0100-535.40 Continuation of AFDC-FC Payments for Non-Court Dependent Youth Age 18 Or Over Residing in an Unrelated Home

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010053540afdc18YEAROLDS.doc>

This procedural guide sets forth procedures that address the continuation of AFDC-FC for non-court dependent youth over 18 years of age living with unrelated caregivers. (JC)

0100-570.11 (REV.) Runaways

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010057011Runaway.doc>

This revised procedural guide informs CSWs of the change in policy regarding the input of information into the Abducted and Runway Kids System (ARKS) system. (JC)

0300-503.55 (REV.) Protective Custody Warrants: Requesting or Recalling

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050355Warrant.doc>

This revised procedural guide instructs CSWs to use the DCFS 729, CSW's Report Re: Protective Custody Warrant to request, recall and renew protective custody warrants and arrests. (JC)

0400-503.05 (REV.) Standards for Documenting Contacts

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0400/040050305V0506.doc>

This revised procedural guide informs CSWs to document the fact that a private discussion took place with a child as part of the documentation of contacts with a child residing in any type of out-of-home care placement. (JC)

0400-503.10 (REV.) Contact Requirements and Exceptions

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0400/040050310ContactRequirementsandExceptions.doc>

This procedural guide has been revised to eliminate the reference to MacLaren Children's Center and to direct staff to make face-to-face contact with the child in the home/facility they reside rather than outside the home. (JC)

0600-500.00 Utilization of Medical HUBS

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0600/0600500000HUBS.doc>

This procedural guide informs CSWs that state regulations require a medical examination for all children placed in out-of-home care and that the mandatory use of the Medical Hubs does not apply to children placed out of Los Angeles County. (JC)

0600-514.10 (REV.) Administration of Psychotropic Medication to DCFS-Supervised Children

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0600/060051410PsychotropicMedV0506.doc>

This revised procedural guide informs CSWs of the new process for physician/psychiatrist submission of authorization request; notice to parent/legal guardian; court determination process; and cross over of cases with Department 95. (JC)

1000-504.10 (REV.) Case Transfer Criteria and Procedures

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/1000/100050410CaseTransferCriteriaRev0506.doc>

This revised procedural guide informs CSWs of new requirements for services to be in place prior to case transfers. (JC)

1200-501.20 (REV.) Child Abduction and the Recovery of an Abducted Child

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/1200/120050120Abduction.doc>

This revised procedural guide has been updated to reflect changes in who is responsible for updating Abducted and Runaway Kids System (ARKS) Web-Site. (JC)

For Your Information (FYIs):

06-31 In re Gina S – Inspection of Juvenile Records

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0631InReGinaSInspetionRecords.doc>

This FYI advises CSWs of an appellate court decision which states that individuals who are permitted to inspect juvenile court files pursuant to WIC 827 are authorized to inspect, but are not entitled to obtain photocopies of the juvenile court files absent a prior court order. (JC)