



Children's Law Center of Los Angeles

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NEW DEPENDENCY CASE LAW

DE FACTO PARENTS, REMOVAL FROM; WIC § 388

In re M.V. – ordered published Jan. 16, 2007, First Dist., Div. Two

Docket No. A112525

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A112525.DOC>

Foster/de facto parents for child, M.V. appealed the juvenile court's order granting the department's Welf. & Inst. Code § 388 petition to remove M.V. from their home. The § 388 petition alleged that M.V. received multiple facial injuries from the foster family's dog, that the social worker had previously observed scratch marks on the child's face and told the foster mother to separate the child from the pets, and that the dog bit the foster parents' biological son's hand earlier that year. At the hearing on the § 388 petition, the parties stipulated that M.V. was injured by the family dog and the de facto parent testified that the dog was no longer in the home. The trial court granted the petition but did not specify the standard of proof used in evaluating the merits of the petition.

Reversed and remanded with directions. The appellate court found that the department's burden of proof at the § 388 hearing was to establish its case by a preponderance of the evidence. The court disagreed with the foster parents' argument that a clear and convincing standard should have been used and stated that de facto parents did not have the same rights as parents or legal guardians. However, the appellate court found that the trial court's findings were inadequate to support its order because the trial court did not specify the burden of proof used or consider the child's best interest. The court stated that the foster parents were willing to remove the dog, thus ameliorating the asserted changed circumstances, and emphasized that the trial court's findings provided no information on the critical issue of whether removing the child from the home served the child's best interest. (JC)

GUARDIANS AD LITEM -- PARENTS

In re James F. – filed Jan. 8, 2007, Second Dist., Div. Seven

Docket No. B188863

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B188863.DOC>

Child was detained in 2003 at the age of two months due to neglect by mother and mental health problems of father. Father had a history of mental illness and a criminal record. Father appeared at the jurisdiction hearing, and the court appointed a guardian ad litem for him. After minor's counsel pointed out that there was no record supporting the appointment of a GAL, father's counsel and the judge told father that a GAL was a "second lawyer," and the court found that father would benefit from having a GAL. Throughout the rest of the case, father's attorney and the GAL made litigation decisions. Father was unable to attend most of the hearings because he was either institutionalized or incarcerated. Father's parental rights were terminated in 2006.

Reversed. As county counsel conceded, the juvenile court erred by appointing a GAL. This was structural error, requiring automatic reversal, because the court deprived father of his status as a party in the case and of any opportunity to participate in the litigation, without due process and without even telling him what a GAL was or why a GAL might be appointed. (J. Perluss dissented, on the grounds that harmless error analysis should apply.) (MM)

ICWA NOTICE; LIMITED REVERSAL

Nicole K. v. Superior Court – filed Jan. 11, 2007, Third Dist.

Docket No. C053987

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C053987.DOC>

Mother filed a writ challenging termination of her reunification services and setting of a Welf. & Inst. Code § 366.26 hearing on grounds that ICWA notice was inadequate. The agency had sent notice to the three Cherokee tribes and the BIA, but notice to one of the tribes was sent to an outdated address. Reversed. The court of appeal found that the notice error was not harmless because there was no conclusive evidence in the record that the tribe had received actual notice of the proceedings. In addition, it vacated the juvenile court's orders, disagreeing with *In re Brooke C.* (2005) 127 Cal.App.4th 377 that a limited remand without reversal was sufficient for all orders except TPR. (CS)

NOTICE TO ALLEGED FATHER

In re Kobe A. – filed Jan. 17, 2007, Second Dist., Div. Four

Docket No. B190595

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B190595.DOC>

Appellant alleged father was incarcerated two days after the child's birth in 2001. In 2003, DCFS detained the child from the mother for drugs. At the detention hearing, the mother said appellant was the biological father. She told the court he was incarcerated in Tehachapi and gave his birth date. Thereafter, DCFS sent various notices of the proceedings to the appellant, but no Paternity-Waiver of Rights (JV-505) form was ever attached. The juvenile court denied reunification services to appellant as a mere biological father. The father first appeared and was appointed counsel at the Welf. & Inst. Code § 366.26 hearing. He said he would be released from prison soon and wanted custody of his son. The court granted a continuance to allow the father's counsel to prepare for the hearing. The father did not appear at the continued § 366.26 hearing. His attorney argued that he had held himself out as the father, but did not object to notice. The court terminated parental rights.

Affirmed. Although the father received inadequate notice due to the juvenile court clerk's failure to serve him with the JV-505 form as required by Welf. & Inst. Code § 316.2 and rule 1413 of the Cal. Rules of Court, the error was harmless. Even if the appellant had been served with the JV-505 form, which advises an alleged father of his rights and how to go about establishing paternity, appellant could not have met the requirements for presumed father status. He was incarcerated two days after

the child's birth until several months before the § 366.26 hearing and so could not have received the child into his home within Fam. Code § 7611(d). Moreover, even assuming appellant had been found to be presumed, his conviction for a violent felony allowed the juvenile court only limited discretion to provide him reunification services under § 361.5(b)(12) and (c). Given the father's lengthy incarceration and lack of any relationship with the child, it was inconceivable that the juvenile court would have removed the child from his foster-adopt home to place him with father. (CS)

UNPUBLISHED CASES OF INTEREST

The following are unpublished and may not be cited as legal authority (Cal. Rules of Court 8.1115(a)):

Notice; Due Diligence

In re Earl D. – filed Jan. 18, 2007, Second Dist., Div. Two

Docket No. B189342

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B189342.DOC>

In January 2004, mother gave birth to a drug-exposed child. DCFS detained this child and filed a dependency petition. The child was released to father, and then DCFS lost contact with the father and child. Mother gave birth to Earl in December 2004. DCFS wanted to assess Earl's well-being, but could not locate mother or Earl. In January 2005, DCFS filed a dependency petition as to Earl, and the court conducted a detention hearing. Mother, father, and Earl were not present for the hearing. DCFS's evidence of due diligence was that: a caseworker spoke to persons living at two of mother's prior addresses, and left a business card at a third address, and one week before the detention hearing, DCFS checked with jail, prison, and probation authorities, and used a 'parent locator' service to try to find father. The court found due diligence, and proceeded with the dependency case. The parents and Earl were located in June 2005, a Welf. & Inst. Code § 366.26 hearing was held in December 2005, and the parents' rights were terminated.

Reversed. DCFS did not exercise due diligence in notifying the parents of the detention hearing, so the requirements of due process were not met. DCFS made no efforts to find father until one week before the detention hearing, and did not check with the person most likely to be in touch with mother, a cousin who had custody of four of her children, with whom mother visited regularly. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

For Your Information (FYIs):

07-02 Informing the Foster Family Agency (FFA) of Adoptive Placement

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0702FFAAdoption.doc>

This FYI advises CSWs that the FFA is to be notified in advance of signing adoptive placement papers. (JC)

07-03 Adoption CSW's can now Obtain Bus Passes/Tokens in Their Regional Offices

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0703BusPassAdoptions.doc>

This FYI advises CSWs that effective immediately, adoption staff who are co-located in a regional office will now be able to obtain bus passes/tokens in their regional office and informs CSWs of the procedures to follow. (JC)

Procedural Guides:

70-548.19 Response to a Mandated Reporter

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007054819v107.doc>

This procedural guide informs CSWS and SCSWs of procedures to follow when completing a response to a mandated reporter. (JC)

0080-502.15 (REV) Non-Related Legal Guardianship From Probate Court: Case Plans

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050215V0107.doc>

This revised procedural guide informs CSWs of procedures to follow when a non-related legal caregiver having legal guardianship or temporary guardianship of over a child requests DCFS services solely for the purpose of obtaining foster care payments. (JC)

100-520.10 (REV) Evaluating a Prospective Caregiver

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052010V0107.doc>

This revised procedural guide informs CSWs that a child may be temporarily placed in the home of a willing and able relative or non-relative extended member caregiver when an emergency occurs after the disposition hearing and that the time limit allowed for initiating a Live Scan of the prospective caregiver has been extended to 10 calendar days. (JC)

100-520.70 (REV) Exemptions For Relatives & Non-Relative Extended Family Members
& Prospective Guardians With Criminal Record Histories

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052070ExmptV0107.doc>

This revised procedural guide informs CSWs of the policy revision to reflect the correct interpretation that Penal Code 667.5(c)(21) "occupied burglary" is an exemptible conviction. (JC)

100-570.08 The Care of Children Placed in a Licensed Foster Home, Relative/Non-Relative
Extended Family Members Home or Small Family Home

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010057008fosthomes.doc>

This procedural guide informs CSWs of questions to ask when visiting children in their placements to ensure they are receiving appropriate care by their caretakers. (JC)

300-301.05 (REV) Petitions

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030105v0107.doc>

This revised procedural guide has been updated to reflect the use of the JV 100A, Juvenile Dependency Petition, when filing a WIC 388 petition. (JC)

300-503.50 (REV) Progress and Supplemental Reports

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050350V0107.doc>

This revised procedural guide informs CSWs of the differences between a progress report and supplemental report. (JC)

400-503.05 (REV) Standards for Documenting Contacts

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0400/040050305V0107.doc>

This revised procedural guide provides CSWs with the framework to document their observations, activities, actions taken, etc. in a consistent manner. (JC)

900-506.10 (REV) Clothing Allowances

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0900/090050610ClothingV0107.doc>

This revised procedural guide informs CSWs of policy regarding the issuance of an emergency check for clothing to relative and non-relative extended family members prior to the foster care eligibility determination. (JC)

1200-500.70 (REV) Adoption of DCFS-Supervised Children by DCFS Employees

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/1200/120050070v107.doc>

This revised procedural guide informs CSWs that DCFS employees may be licensed as foster parents, but may not have DCFS children placed in their care and that when DCFS employees pursue the adoption of a DCFS-supervised child, it is important to ensure that there is not a conflict of interest or an appearance of a conflict of interest in the case. (JC)