



Children's Law Center of Los Angeles

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NEW DEPENDENCY CASE LAW

AFDC-FC PAYMENTS -- CHILDREN PLACED OUTSIDE U.S. INELIGIBLE

In re Joshua S. – filed Jun. 7, 2007, Cal. Supreme Court

Docket No. S137583

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S137583.DOC>

The juvenile court placed the children in legal guardianship with their grandmother in Canada and terminated jurisdiction, finding it lacked authority to order the Department to provide funds to the grandmother outside the U.S. The children appealed and the court of appeal reversed, holding that the children would be eligible for AFDC-FC payments if they were placed in long-term foster care instead of guardianship with the grandmother in Canada. The Department petitioned the Supreme Court for review.

Reversed. The Court held the children would have been ineligible for federal financial participation and thus AFDC-FC payments even if they were placed in long-term foster care because federal law limits the funding to foster family homes licensed by and located within a state, and Canada is not a “state” for these purposes. The Court also said that the juvenile court lacked the power to order the Department to make AFDC-FC payments without an administrative determination that the children were eligible for those payments. (CS)

GUARDIANSHIP – TERMINATION OF; WIC § 366.3

In re Jessica C. – filed May 25, 2007, Fifth Dist.

Docket No. F051144

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F051144.DOC>

Children Jessica and Brett and their grandfather appeal from the juvenile court's order terminating a guardianship created in a dependency action as the permanent plan. The children had lived with their grandparents for many years, were bonded to them and thriving in their care before their grandmother died. Soon after, the grandfather experienced serious health problems and was hospitalized. The department filed a Welf. & Inst. Code § 388 petition seeking a change of the previous court order and requesting that the guardianship be terminated. In addition, the petition sought to reinstate the

dependency proceeding and to have the children's permanent plan be changed to long-term foster care. The juvenile court found that the grandfather was no longer able to adequately supervise or protect the children and terminated the guardianship. Reversed and remanded. The appellate court first found that the petition to terminate the guardianship should have been initiated under section 387, and not section 388. The appellate court stated that section 387 applies when termination of the guardianship will result in foster care placement. (*In re Carlos E.* (2005) 129 Cal.App.4th 1408.) The appellants argued that the juvenile court erred in failing to evaluate whether providing services to the grandfather would have prevented termination of the guardianship. The appellate court agreed and found the failure to do so was an abuse of discretion and reversible error. The appellate court found no evidence that any evaluation of services was made available to the grandfather and stated that Welf. & Inst. Code section 366.3 required that maintenance services be considered before terminating a guardianship. In addition, in order to determine the children's best interests, the juvenile court was obligated by statute to consider whether maintenance services to the grandfather as described in Cal. Rules of Court, rule 5.740(c)(3)(B) and section 301, could have been provided to save the guardianship. While acknowledging that legal guardians appointed by the dependency court are not entitled to reunification services, the appellate court emphasized the need to at least consider whether services are available to ameliorate the need for modification of the permanent plan. (JC)

ICWA REVERSAL – PARENT HAS RIGHT TO NOTICE AND COUNSEL ON REMAND

In re Justin S. – filed May 21, 2007, Sixth Dist.

Docket No. H030732

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/H030732.DOC>

Mother appealed the termination of her parental rights alleging ICWA notice violations. The appellate court conditionally reversed and remanded for the limited purpose of providing proper ICWA notice. New ICWA notices were sent. Without noticing the mother or re-appointing counsel for her, the juvenile court found the new notices proper and reinstated the order terminating parental rights. Mother again appealed. Reversed. The appellate court held that the mother was entitled to notice of and appointed counsel at the ICWA notice hearing after remand. In addition, it found the juvenile court violated Welf. & Inst. Code § 224.3(e)(3) in holding the notice hearing less than 60 days after the notices were sent where responses had not been received from all the tribes. (Note that the court of appeal also implored attorneys representing the Department and children to do a better job of catching ICWA notice errors early in the proceedings.) (CS)

PATERNITY; FULL FAITH AND CREDIT

In re Mary G. – filed May 24, 2007, Fourth Dist., Div. One

Docket No. D049027

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D049027.DOC>

Mary was detained in November 2005 at the age of 3 due to mother's drug use. Mother gave the agency father's name, and said that father had a paternity judgment in Michigan. In January 2006 the agency located father, who lived in Louisiana. In February 2006, father requested a hearing on whether he was a presumed father. He stated that he had signed a paternity declaration in Michigan when Mary was born, and provided a copy of his Michigan child support order. The court denied him presumed father status, and said he could file a WIC § 388 petition if he wanted services. In April 2006, father filed a § 388 petition, attaching a copy of Mary's birth certificate with his name as the father. The court denied the petition without a hearing and set a § 366.26 hearing. In July 2006, father filed another § 388 petition, attaching a copy of the Michigan paternity declaration. The court denied this petition as well, stating that California law does not recognize out-of-state paternity declarations

and that reunification services for alleged fathers are discretionary and, in this case, giving father services would not be in Mary's best interest. The court then terminated parental rights.

Reversed. It would violate equal protection rights to deny presumed father status solely because the voluntary paternity declaration is from another state. Also, the paternity declaration is entitled to full faith and credit, under the constitution and Fam. Code § 5604. The juvenile court should have granted presumed father status and ordered reunification services. (The court of appeal also held that the juvenile court correctly denied mother's § 388 petition and found that the § 366.26(c)(1)(a) exception did not apply, but the ICWA notices were inadequate because they were sent to the wrong address for one tribe.) (MM)

REUNIFICATION SERVICES – DENIAL; WIC § 361.5(b)(6)

Tyrone W. v. Superior Court – filed May 31, 2007, Fourth Dist., Div. One

Docket No. D049824

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D049824.DOC>

T.W., age 1 ½, was detained due to domestic violence between the parents and the SIDS death of his infant sister, who had several rib fractures at the time of her death. At the jurisdictional hearing, the juvenile court sustained WIC § 300(e) and (j) counts, and denied the parents reunification services under § 361.5(b)(6). Father filed a writ petition.

Writ denied. The court of appeal agreed with father that denial of reunification services under § 361.5(b)(6) cannot be based on mere negligence, i.e. on a finding that the parent should have known that the child was being abused by another person. For § 361.5(b)(6) to apply, the juvenile court must either find that the parent himself inflicted the abuse, or knew the child was being abused. Here, the baby's injuries were not obvious or visible, so a §361.5(b)(6) finding could not have been made on the basis that both parents must have known about the abuse even if only one of them was the perpetrator. However, the court did make jurisdictional findings under § 300(j) that "the parents" inflicted the abuse on the baby. Father failed to challenge that finding on appeal. This finding is sufficient to support the denial of reunification services. (In a concurring opinion, J. Benke reached the same result by different reasoning: rejecting the majority's interpretation of the § 300(j) count as a factual finding that both parents were perpetrators, but interpreting § 361.5(b)(6) to apply to a negligent parent who should have known about the abuse.) (MM)

STANDING IN HABEAS CORPUS PROCEEDING

In re Paul W. – filed May 23, 2007, Sixth Dist.

Docket No. H029866

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/H029866.DOC>

In this appeal, mother challenges her lack of party status in a habeas corpus proceeding that was ordered to examine father's claim of ineffective assistance of counsel at the jurisdiction and disposition hearings. Family law orders were made for this family prior to a dependency petition being filed. The dependency petition alleged that the children had been sexually abused and that the parents failed to protect them. The juvenile court sustained the petition and declared the children dependents of the court. Mother eventually reunified with the children and the juvenile court terminated jurisdiction with a family law order granting mother physical custody of the children and barring father from visitation or contact. Father filed a habeas corpus petition with the appellate court and the matter was returned to superior court for an evidentiary hearing on father's claim of ineffective assistance of counsel. Mother was aware of the hearing for father's habeas claim but never appeared or made an attempt to intervene

in the proceeding. The trial court concluded that father's counsel rendered ineffective assistance, vacated its jurisdictional findings and subsequent orders, and transferred the matter back to family court.

Appeal dismissed. The appellate court found that mother lacked standing to participate in the habeas corpus proceeding. Because father's habeas proceeding did not seek a change in custody of the children living with her, mother was not a party to the proceeding. In addition, mother made no attempt to intervene and thereby forfeited any claim that she was entitled to participate as a party. Even assuming mother had not forfeited her claim, the appellate court found that she still lacked standing because she was not an aggrieved party. Mother was not aggrieved by the court's dismissal of the dependency petition because the ruling did not affect her interest in maintaining custody of the children as they remained with her. The appellate court noted that mother lacked standing to raise issues affecting only the father and his counsel. And while mother's credibility as a witness was raised during the habeas proceeding, the appellate court found that any harm to her credibility was at best a "remote consequence" of the ruling and did not satisfy the requirements of standing under *In re Carissa G.* (1999) 76 Cal.App.4th 731. (JC)

NON-DEPENDENCY CASES OF INTEREST

REMOVAL WITHOUT WARRANT VIOLATED FAMILY'S CONST. RIGHTS

Rogers v. County of San Joaquin – filed May 29, 2007, Ninth Circuit

Docket No. 05-16071

Link to case:

<http://www.ca9.uscourts.gov/ca9/newopinions.nsf/04485f8dcbd4e1ea882569520074e698?OpenView&Start=1&Count=250&Expand=1.2#1.2>

San Joaquin County Child Protective Services removed two children, ages five and three, from their parents' home based on evidence that the children were not toilet-trained, were locked in their bedrooms at night, were not receiving medical or dental care, the five-year-old was suffering from severe bottle rot, and the home was dirty and contained unsecured guns. The children were returned two weeks later. The parents and children filed a 42 U.S.C.S. § 1983 action alleging the social worker's removal without a warrant violated their 4th and 14th Amendment rights. The district court found the social worker's actions were protected by qualified immunity and granted her summary judgment. The family appealed. Reversed. The Ninth Circuit court held that warrantless removal of children is only allowed in cases of exigency, and a reasonable social worker would have known that the children were not at imminent risk of serious bodily harm in the short time it would have taken to obtain a warrant. The fact that the agency waited 18 days to investigate the referral supported the finding that no exigency existed. (CS)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

70-559.10 (REV) Summary of Clearances

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007055910V0507.doc>

This revised procedural guide informs CSWs of the various criminal and child welfare clearances and instructs SCSWs and CSWs to evaluate each clearance to determine the risk a person may pose to children. (JC)

100-525.10 (REV) Interstate Compact on the Placement of Children (ICPC)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052510ICPCv0507.doc>

This revised procedural guide informs CSWs of procedures the sending state must follow and clarifies visits versus placements indicating that dependent children may visit out of state for up to 30 days without ICPC approval. (JC)

100-570.11 (REV) Runaways

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010057011RunawayV0507.doc>

This revised procedural guide informs CSWs to recommend termination of jurisdiction of a youth over the age of 18 who is a runaway, unless specified circumstances exist. (JC)

300-503.10 (REV) Writing the Jurisdictional/Dispositional Hearing Report

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050310JurisDispoReptV0507.doc>

This revised procedural guide instructs CSWs to include a summary of all contacts with tribal representatives, tribal membership status and whether or not the tribe is federally recognized. CSWs are also to make active efforts to help the child remain safely in the home, if possible, or to locate an American Indian home for the child's placement. (JC)

300-503.20 (REV) Writing the WIC 366.26 Hearing Report

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050320WI26Reptv0507.doc>

This revised procedural guide instructs CSWs to include a summary of all contacts with tribal representatives, tribal membership status and whether or not the tribe is federally recognized. CSWs are also to indicate whether prospective adoptive parents have been provided with information on Post-adoption Contact Agreement and if parties are interested in a Post-adoption Contact Agreement or if parties have been referred to the Consortium for Children's Permanency Planning Mediation. (JC)

300-503.55 (REV) Protective Custody Warrants: Requesting or Recalling and Report of Runaway Event/Return of Youth Age 18 or Older

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050355WarrantV0507.doc>

This procedural guide has been revised to reflect that CSWs will recommend termination of jurisdiction of a youth over the age of 18 who is a runaway, unless specified circumstances exist. (JC)

300-503.85 (REV) Permission for a Child To Marry, Join The Armed Forces or The Job Corps

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050385V0507.doc>

This revised procedural guide informs CSWs of procedures to follow when seeking the court's permission for a child to join the armed forces or Job Corps, or marry. (JC)

300-503.94 Set-on Procedures

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050394V0507.doc>

This revised procedural guide informs CSWs of procedures to follow when requesting the calendaring of an appearance hearing. (JC)

300-503.97 (REV) Report on Notice of Replacement

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050397V0507.doc>

This revised procedural guide informs CSWs that the Ex Parte Application and Order report will be used as the "Notice of Replacement" for the court when a child's placement has been changed. A "Notice of Replacement" shall be submitted to the court within 48 business hours of a child's replacement. In addition to notifying the court, the child's attorney must also be notified. (JC)

300-503.98 (REV) Continuance Requests

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050398ContReqV0607.doc>

This procedural guide has been updated to allow the submission of a continuance request when a CSW fails to send timely and/or proper notice for a WIC 366.26 hearing. Failure to send timely and/or proper notice for any other appearance hearing is not an appropriate reason for a continuance. (JC)

400-504.21 (REV) Contact at Unlicensed or License-Exempt Child Care Facilities

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0400/040050421V0507.doc>

This revised procedural guide informs CSWs on what steps to take when they encounter an unsafe daycare setting. (JC)

500-509.20 (REV) Request by Law Enforcement, District Attorney or Public Defender to Interview a Child

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0500/050050920v0607.doc>

This revised procedural guide informs CSWs of procedures to follow when law enforcement, the district attorney, or public defender requests to interview a child. (JC)

For Your Information (FYIs):

07-18 Maintaining Accurate Case Record Information

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0718CaseRecordInfo.doc>

This FYI reminds staff that it is a CSW's responsibility to ensure that all identifying information (i.e., names, addresses, etc.) regarding clients is recorded and is current on CWS/CMS, and when new information regarding a client comes to the CSW's attention that CWS/CMS be updated accordingly. (JC)

