



# Children's Law Center of Los Angeles

## **"DEPENDENCY LEGAL NEWS"**

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### **NEW DEPENDENCY CASE LAW**

#### **APPLICATION FOR REHEARING – WELF. & INST. CODE § 252**

*In re B. A.* – filed Aug. 9, 2006, Second Dist., Div. Five

Docket No. B187208

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B187208.DOC>

Father appealed denial of rehearing pursuant to Welf. & Inst. Code § 252 arguing that his application for rehearing was granted by operation of law because the minute order for child Sandra was filed beyond the 20-day period and no minute order was filed as to child B.A. On the 20<sup>th</sup> day, the court denied the application for rehearing by checking the "denied" box in the "order" section of the face of the application. Affirmed. Under § 252, an application for rehearing is deemed granted by operation of law if a superior court judge does not grant or deny the application, or find good cause to extend the time period, within 20 days after the application is filed. The appellate court found that the juvenile court judge's handwritten orders denying applications for rehearing within 20 days of filing satisfied the timeliness requirements of § 252. The appellate court further noted that a clerk's failure to enter a minute order forthwith reflecting the denial of rehearing or clerk's failure to enter an order, did not "affect the validity or effectiveness" of the judge's timely order denying rehearing. (JC)

### **NON-DEPENDENCY CASES OF INTEREST**

#### **PATERNITY/MATERNITY**

*In re Amy G.* – filed Aug. 17, 2006, Second Dist., Div. Three

Docket No. B187828

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B182101.DOC>

Nathan was born to Kim and a married man with whom she was having an affair. A month after Nathan's birth, Kim gave him to father, and signed a document purporting to consent to step-parent adoption by father's wife, Amy. Father and Amy began caring for Nathan. Three months later, Kim filed a paternity action, seeking custody, visitation, and child support orders. Father opposed this action, and requested a judgment that Amy was Nathan's presumed mother. Amy also filed a

parentage action. The trial court ruled that Amy did not have standing to file a parentage action, nor to be joined as a party in Kim's parentage action, because she had no valid parentage claim.

Affirmed. Since Kim gave birth to Nathan, she is a presumed parent under Fam. Code § 7610(a). Maternity claims under the "holding out" presumption, § 7611(d), have been recognized only in situations where there was no competing claim by the biological mother (*Karen C., Salvador M.*), or where there was a biological and a presumed mother, but no father (*Elisa B.*). Where a child's biological mother promptly comes forward to assert her parentage claim, and the child's father is present as well, the father's wife cannot assert a presumed-mother claim under § 7611(d) or § 7540. (MM)

### **UNPUBLISHED CASES OF INTEREST**

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

#### **Exit Orders**

*In re Mercedes R.* – filed Aug. 22, 2006, Second Dist., Div. One

Docket No. B188631

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B188631.DOC>

Mother appealed the juvenile court's family law exit order which gave physical custody to father and provided in part: "Family law court to modify existing visitation/custody orders only after mother completes an extensive parenting and anger management program." The court of appeal held the juvenile court was authorized under Welf. & Inst. Code § 362.4 and *In re Chantal S.* (1996) 13 Cal.4th 196 to condition the family court's ability to modify the mother's visitation on her completion of additional programs. However, the juvenile court was ordered to clarify its order to indicate that the actual programs to be completed were ones that the family law court determined to be appropriate. Also, the appellate court ordered the term "extensive" to be stricken from the order as it was up to the family law court to determine the duration of the programs. (CS)

#### **Writ Petitions -- Cal. Rules of Court 38.1**

*Tanya K. v. Superior Court* – filed Aug. 15, 2006, Fourth Dist., Div. Three

Docket No. G037006

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/G037006.DOC>

Counsel for mother filed a writ petition after the court terminated reunification and set a Welf. & Inst. Code § 366.26 hearing. The petition totally failed to comply with rule 38.1 of the Cal. Rules of Court and, per the court of appeal, was so deficient that it would have been summarily denied in any other context, but given the important interests involved in juvenile dependency cases, the court decided the case on its merits (and denied the petition). Regarding counsel's performance, the appellate court said that in light of the recently published opinion in *In re S.C.* (2006) 138 Cal.App.4th 396, "no practicing attorney can claim ignorance of the proper standards for briefs in juvenile cases" and referred mother's counsel to the State Bar to decide whether discipline was warranted. (CS)

### **OTHER LEGAL DEVELOPMENTS**

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

**Procedural Guides:**

**For Your Information (FYIs):**

06-43 Interagency Placement Screening Committee

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0643InteragencyScreeningComm.doc>

This FYI informs CSWs of the criteria children and youth need to meet before being presented to the Interagency Placement Screening Committee for review and recommendations of intensive treatment programs. (JC)

06-45 Process Service County Wide Rollout – Personal Delivery of TPR (Termination of Parental Rights) Hearing Notices

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0645PersonalServiceRollOut.doc>

This FYI informs CSWs of a countywide rollout of the process service contract with Yoakum investigations which consists of personal delivery of TPR Hearing Notices in five counties including Los Angeles, Ventura, Riverside, San Bernardino, and Orange County. (JC)

06-46 Adoptive Placements of DCFS Supervised Children in Mexico

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0646AdoptivePlacementinMexico.doc>

This FYI outlines DCFS protocol for adoptive placements in Mexico of a child who is a US resident/citizen. (JC)

06-47 Educational Records Blanket Order

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0647EducationBlanketOrder.doc>

This FYI informs CSWs of an Educational Records Blanket Order that authorizes release of education records of children subject to juvenile court proceedings and informs CSWs of the requirements and provisions of the Order. (JC)

**Procedural Guides:**

300-306.05 (REV) Notice of Hearing For Juvenile Court Proceedings

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030605V0906.doc>

This procedural guide is revised to make references related to concurrent planning protocols, court's authority to waive publication of citation for an identity unknown parent, process server for personal service of 366.26 notices, delete reference to SNAP, and updated forms and corresponding locations. (JC)

500-501.10 (REV) Releasing DCFS Case Record Information

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0500/050050110V0906.doc>

This procedural guide has been revised based on the *In re Gina S.* appellate court decision regarding the inspection of juvenile court records. (JC)

500-501.20 (REV) Release of DCFS Case Records to Service Providers

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0500/050050120V0906.doc>

This procedural guide has also been revised to address the *In re Gina S.* appellate court ruling. (JC)

500-501.35 (REV) Responses To Subpoenas

Link to procedure: [http://dcfs.co.la.ca.us/policy/hndbook%20cws/0500/050050135V0906\\_001.doc](http://dcfs.co.la.ca.us/policy/hndbook%20cws/0500/050050135V0906_001.doc)

This revised procedural guide informs CSWs of policies and procedures regarding subpoenas in light of *In re Gina S.* (JC)

500-504.10 (REV) Protection & Disclosure Of HIV/AIDS Information

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0500/050050410V0906.doc>

This revised procedural guide informs CSWs of responsibilities regarding the consent of release of HIV/AIDS information, recording and filing HIV/AIDS information, and submitting HIV/AIDS information to the court as it relates to *In re Gina S.* (JC)