



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

DECLARATORY JUDGMENT, Code Civ. Proc. §1060

In re Claudia E. – Filed June 2, 2008, Fourth Dist., Division One
Docket No. D052169

Link to case: : <http://www.courtinfo.ca.gov/opinions/documents/D052169.DOC>

Two children were detained due to parents' drug use and domestic violence, but returned to mother before six-month hearing. County agency later removed children from mother and placed them in foster homes, and filed a WIC 387 petition one week later. Court returned children to mother. Three months later, county agency again removed the children and filed a WIC 387 petition four days later. At detention hearing, children's counsel sought a declaratory judgment under CCP 1060 that the county agency's practice of filing untimely WIC 387 petitions was unlawful. Juvenile court denied the motion on the grounds that the children had to exhaust other remedies, such as a habeas corpus petition, before seeking declaratory relief. Children appealed.

Reversed. Declaratory relief is an equitable remedy designed to resolve a dispute over an agency's policies or statutory interpretation. It is an alternative, optional remedy and does not require exhaustion of other remedies. The purpose of CCP 1060 is consistent with the use of this remedy in dependency court, and a statute outside the WIC may be

applied in dependency proceedings if it is consistent with the overall purposes of the dependency system. The requirement of an actual controversy was fulfilled in this case, even though the agency conceded that it filed the two WIC 387 petitions late, because children's counsel alleged the county agency had an ongoing policy or practice of filing untimely WIC 387 petitions and the agency denied this. (MM)

RELATIVE PLACEMENT PREFERENCE

In re Joseph T. – filed June 3, 2008, Second Dist., Div. One
Docket No. B198610

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B198610.DOC>

Father appealed from an order at the six-month review hearing denying placement of Joseph with his paternal aunt. Joseph and his half-sibling, Shane, were detained from mother and placed in a foster home. At the detention hearing, the juvenile court ordered DCFS to assess the maternal grandparents and Shane's paternal grandmother for placement. For various reasons, DCFS determined that these relatives were not suitable placements for the children. Joseph was released to his father and then re-detained and replaced in his previous foster home with Shane when his father relapsed and engaged in domestic violence with mother. At the six-month review hearing, DCFS recommended termination of reunification services and upon father's request, the juvenile court ordered a supplemental report to address placing Joseph with his paternal aunt, Deborah. DCFS recommended against placement with the aunt because she stated father would be living with her when released from prison and because DCFS had not received a Live Scan for her significant other. DCFS also argued that under WIC 361.3(d), the relative placement preference applied at the time of disposition and thereafter only when a new placement of the child was needed.

Affirmed. The appellate court rejected DCFS' contention that WIC 361.3(d) eliminated the relative placement preference after the dispositional hearing in circumstances other than when a new placement of the child must be made. It stated nothing in section 361.3(d) states or implies such a result and DCFS' interpretation of the statute would thwart the strong California policy in favor of relative placement as manifested in section 361.3(a). The appellate court also stated that when a relative voluntarily comes forward at a time when a new placement is not required, the relative is entitled to the preference and the court and the social worker are obligated to evaluate that relative. The appellate court further stated that the juvenile court's failure to afford the relative placement preference to Joseph's aunt and court's failure to state on the record its reasons for denying her placement request were harmless errors. The record contained compelling reasons not to place Joseph with his aunt regardless of her qualifications as a relative – the best chance of reunification in this case was with Joseph's mother and placing Joseph in Kern County with the aunt would have made reunification difficult for the mother in Los Angeles and Joseph would have been separated from his brother. (JC)

REVIEW OF DENIAL OF FUNDING

In re Darlene T.- filed June 5, 2008, Second Dist., Div. 2
Docket No. B200176

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B200176.DOC>

On October 27, 2006, children were detained with maternal grandmother and the court ordered an update on the status of ASFA by the jurisdiction hearing. At a supplemental hearing on January 5, 2007, DCFS reported that ASFA approval was pending to obtain Livescan results and for completion of a corrective action plan (CAP) which the grandmother had actually completed prior to the hearing. ASFA approval was eventually denied on January 26, 2007 because an undocumented nephew in the home was unable to submit to Livescan without proper identification. The nephew finally submitted to a Livescan in March 2007, a new ASFA referral was opened, and the grandmother received ASFA approval on April 12, 2007. The juvenile court found that her home met ASFA requirements on December 4, 2006 and ordered retroactive payments from the date of detention after holding an order to show cause for sanctions. DCFS appealed after a request for a rehearing and writ of supersedeas was denied, arguing that the juvenile court acted in excess of its power, violated the doctrine of separation of powers, and violated the law requiring applicants to exhaust administrative remedies before a court may consider the issue of ASFA funding.

Reversed. Under WIC 10950, an applicant who is denied funding must first file a request with the Department of Social Services (DSS) for a hearing with an administrative law judge or director of DSS. Under WIC 10960, if the applicant receives an adverse decision he or she may request a rehearing within 30 days of the decision. The director of DSS is required to grant or deny the request for rehearing within 15 days, and failure to act is deemed a denial. Only after all administrative remedies are exhausted, pursuant to WIC 10962 the applicant may file a writ petition with the superior court requesting review of the entire proceedings. An applicant's failure to exhaust administrative remedies may only be excused if he or she qualifies for an exception, but that is not the case here. The grandmother never made an effort to challenge the January 2007 denial of ASFA approval directly with DSS and there is no indication that review of the denial was outside the scope of DSS's authority or review would render another unfavorable decision. Further, although WIC 362(a) allows the juvenile court to "make any and all reasonable orders for the care, supervision, conduct, maintenance, and support" of dependent children, the juvenile court may not use this code section to order funding, according to the Supreme Court. Finally, the appellate court declined to address the argument that the order for retroactive funding was an imposition of sanctions and was appropriate because the record did not indicate that the order was actually an imposition of sanctions. (SA)

CASE TRANSFER

In re R.D. – filed June 3, 2008, Fourth Dist., Div. Two
Docket No. E044391

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E044391.DOC>

DCFS appealed an order of the San Bernardino County juvenile court “accepting” transfer of a case from Los Angeles County for the sole purpose of entering orders to transfer the matter back to Los Angeles County. R.D. was detained from the mother and mother was offered reunification services in Los Angeles. Mother’s parental rights were later terminated and R.D. went from a permanent plan of adoption to long-term foster. After a failed guardianship due to R.D.’s behavioral issues, he was eventually placed with his maternal aunt who sought legal guardianship of him. After R.D. had been residing with his aunt for several months, the Los Angeles County juvenile court issued transfer orders to transfer the supervision of the case to San Bernardino County because R.D. and his guardian both lived there. The San Bernardino County juvenile court ordered the “proceedings accepted for the sole purpose of return of jurisdiction to Los Angeles County” and relied on WIC 17.1(e) to find that Los Angeles remained R.D.’s county of residence as the termination of parental rights hearing was held in that county.

Reversed. The appellate court found that the San Bernardino County juvenile court improperly rejected the transfer from Los Angeles County and that it failed to consider whether the best interests of R.D. would be served by the re-transfer. Relying on *In re J.C.* (2002) 104 Cal.App.4th 984 and California Rules of Court, rule 5.612, the appellate court stated that “on receipt and filing of an order of transfer, the receiving court shall take jurisdiction of the case. The receiving court may not reject the case.” If the receiving court disagrees with the findings underlying the transfer order, its remedy is to accept transfer and either appeal the transfer order or to order a transfer-out hearing, which must be a separate hearing from the transfer-in hearing and consider the best interest of the child. The appellate court found that the San Bernardino County juvenile court did not hold a separate hearing and failed to consider whether R.D.’s best interests would be served by transferring the case back to Los Angeles. The appellate court also found that the San Bernardino County juvenile court erroneously relied exclusively on WIC 17.1(e) and disregarded the other subdivisions within the statute and the purpose of the provision to find that Los Angeles was R.D.’s residence. Section 17.1(a) provides that the residence of a person who has been given custody and control of a child determines the child’s residence. In this case, R.D.’s legal guardian is the aunt and she resides in San Bernardino and San Bernardino county could best monitor R.D.’s well-being, placement, as well provide appropriate services. (JC)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-23 Montebello Unified School District Pilot

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0823MUSDPilot.doc>

This FYI states that DCFS and the Montebello Unified School District (MUSD) have developed a plan to have a bilingual full-time CSW III outstationed at one of the schools to partner with the school district and resource parents and/or parents in developing a comprehensive education plan for all foster children who are school aged and are attending a school within the Montebello Unified School District. To do so, DCFS and MUSD agreed to share juvenile case file records, adult probation records, health records, education records, public assistance records, mental Health records, developmental disability records, substance abuse records, HIV test result records, and all reports developed by the school district. (SA)

08-24 TILP for FFA's

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0824TILPforFFA.doc>

According to this FYI, when a child is placed through an FFA, the FFA must be provided with a copy of the approved Transitional Independent Living Plan (TILP) or TILP Update, in addition to the copies that must be provided to the child and caregiver. (SA)

08-25 SOC 832, Notice of Child Abuse Central Index Listing

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0825SOC832.doc>

This FYI states that although form SOC 832 "Notice of Child Abuse Central Index Listing" does not have a field to enter the name of the perpetrator, the State is in the process of revising the form. Until it is revised, CSWs are to manually enter the name of the perpetrator on the form. (SA)

08-26 Children's Court Access And Security

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0826CourtAccess.doc>

This FYI advises staff that access into the courthouse will no longer be available through the front doors before 7:30 am or after 4:30 pm Monday through Friday. It also advises staff that Court Reports may be placed in the DCFS White Mailboxes between the hours of 4:30 pm and 7:30 am only. However, if the mailboxes are full or if it is after 7:30 am, the reports must be hand-delivered to the Court-Liaison during business hours because the reports are confidential documents. (SA)

Procedural Guides:

0100-520.10 (REV) Evaluating A Prospective Caregiver

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052010V0508.doc>

This procedural guide was revised to add instructions on how CSWs can obtain Notary services and instructions on how to pay fees to access child abuse registry information in other States. It was also revised to reflect that the Kinship Support division is now called the ASFA Division. (SA)