



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

Vol. 4, No. 14 July 24, 2008

Issued by the Children's Law Center of Los Angeles the second and fourth Tuesday of each month

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### **NEW DEPENDENCY CASE LAW**

#### **ADOPTABILITY & ICWA**

***In re Brandon T.***- filed June 20, 2008, published July 18, 2008, Third Dist., Div. \_\_  
Docket No. C057638

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C057638.DOC>

At detention, both parents disclosed possible Native American heritage and agency served ICWA notices on the Apache and Venetie tribes and BIA. Initially, only the Apache tribes responded that the child was not a member or eligible for membership. At the jurisdiction hearing, the court denied reunification services to the mother because she previously failed to reunify with child's siblings but offered services to the father. At the six month review, the court terminated father's reunification services and set a WIC 366.26 hearing. Pending the WIC 366.26 hearing, the Venetie tribe found the child was a member of the tribe and its motion to intervene was granted. The child was also moved to the home of extended family members that wanted to adopt him. At the WIC 366.26 hearing, an Indian expert testified that return of the child to the parents would be detrimental and the Venetie tribe supported the current placement and did not object to termination of parental rights. The court found beyond a reasonable doubt that continued custody of the child by the parents was detrimental, that the agency made active efforts, that the placement was consistent with the placement preferences of ICWA, and found by clear and convincing evidence that child was likely to be adopted and terminated parental rights. Mother appealed, contending there was insufficient evidence to support a finding that the child was adoptable, that ICWA placement preferences were applicable, and that the court erroneously applied ICWA.

Affirmed. Here, there was sufficient evidence to support the finding that the child was adoptable. Although good cause is required under 25 USC § 1915 to deviate from ICWA placement preferences, a relative placement that complied with ICWA preferences was found here so there was no need for the court to find good cause to deviate from ICWA placement preferences. Also, exceptions to adoption, such as when the tribe has identified another permanent plan or when adoption would substantially interfere with the child's connection to his tribe, did not apply here because the tribe was in favor of the relatives adopting. Further, although the child might not have been generally adoptable because of all the ICWA-related variables, he was specifically adoptable by his relative caretakers. He had been in the placement for almost a year when parental rights were terminated, was bonded to his caretakers, the relatives were assessed and found to meet the needs of the child under WIC §§ 309, 361.3(a)(8), and 361.4(a), the relatives had adopted two other children, and there were no legal impediments to adoption. Although the home study had not been completed, when there are no legal impediments to completing the adoption, parental rights may still be terminated to a specifically adoptable child. Also, there were no obstacles to completing the home study in a routine manner to finalize the adoption within a reasonable time as required.

In regards to mother's ICWA claims, more than one qualified ICWA expert is not required to testify before terminating parental rights. The BIA guidelines state that one *or more* qualified ICWA experts are required and the court here had a qualified expert testify. Also, mother's repeated exposure of her children to drugs and physical abuse was sufficient evidence for the court to conclude that continued custody of the child by the parents would likely result in serious emotional or physical damage to him, as required under 25 USC §1912(f). Further, mother was not prejudiced by the agency's failure to present evidence regarding the prevailing social and cultural standards of the child's tribe, as required under WIC 224.6(b)(2). Finally, it was harmless error to not provide the Apache tribes information about the maternal grandfather and paternal grandmother because there was no claim that the paternal grandmother had Indian heritage and the Apache tribes determined the child was not an Indian child based on the maternal great-grandfather's ancestry. (SA)

## ICWA

***In re A.B.***--Filed July 8, 2008, Fourth Dist., Div. One

Docket No: D052401

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/D052401.DOC>

Child was declared a dependent under WIC 300, subdivision (b). At the detention hearing, father had submitted a Form JV-130 [currently Form ICWA-020] which stated that, to his knowledge, he had no Indian heritage. At the jurisdictional hearing, father's information was confirmed, and with the consent of the parties, the court found that the ICWA was inapplicable. Mother's counsel agreed to complete a Form JV-130 by the time of the next hearing, but the form was never submitted, apparently through inadvertence. Subsequently, the court terminated parental rights. Father appealed, on the grounds that the juvenile court violated the ICWA by not inquiring as to the Indian heritage of mother.

Affirmed. Although the duty of inquiry as to mother's Indian heritage was violated, the error was harmless. At the WIC 366.26 hearing, the county agency had filed a certified copy of a Form JV-130 filed by mother in a different case relating to child's sibling, in which mother denied any Indian heritage. This form was made a part of the appellate record in this case pursuant to Rule 8.155(a)(1)(A) of the California Rules of Court. This consideration of post judgment evidence was appropriate under *In re Josiah Z.* (2005) 36 Cal.4<sup>th</sup> 664, since the post-judgment evidence did not go to the substantive merits of the proceeding. Further, California Civil Procedure Code section 909 allows appellate courts to accept evidence in dependency court to "expedite just and final resolution for the benefit of the children involved." Although pursuant to *In re Seth Z.* (2003) 31 Cal.4<sup>th</sup> 396, 405 an appellate court should not make findings based on section 909 evidence "absent exceptional circumstances," this case presented an "exceptional circumstance" justifying the inclusion in the appellate record of the Form JV-130 from the child's sibling's case. Based on the augmentation of the record, the failure to inquire as to mother's Indian heritage constituted harmless error. (PB)

### **PARENT'S REQUEST FOR SELF-REPRESENTATION; UNDUE DELAY**

*In re A.M.* – filed July 18, 2008, Fourth Dist., Div. Three

Docket No. G039713

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G039713.DOC>

Father appealed jurisdiction and disposition orders on the ground that the juvenile court erred by denying his request to represent himself. A.M. was detained in November 2006 based on allegations of abuse by her father. The jurisdiction/disposition hearing set for December 19 was continued several times due to father's medical condition and ultimately commenced on October 9, 2007. On October 29, father's counsel declared a conflict of interest, asked to be relieved, and new counsel was appointed. Father wanted a 3-4 month continuance for new counsel to prepare while new counsel did not believe it would take that long. The juvenile court continued the matter for one month. On three subsequent occasions, father requested a continuance and requested to represent himself. The juvenile court denied father's requests noting that the dependency proceedings had been going on for over a year, that father was represented by more than competent counsel, and that further delays would be harmful for all parties involved.

Affirmed. The appellate court found that the juvenile court did not abuse its discretion in denying father's request to represent himself. Relying on *In re Angel W.* (2001) 93 Cal.App.4<sup>th</sup> 1074, the appellate court stated that while WIC 317(b) gives a parent in a juvenile dependency case a statutory right to self-representation, that right is statutory only and not a constitutional right. In dependency proceedings, a parent's statutory rights, including the right to self-representation, must always be weighed against the child's right to a prompt resolution of the case. The juvenile court has discretion to deny the request for self-representation when it is reasonably probable that granting the request would unduly delay resolution of the dependency proceedings or unduly disrupt the proceedings. In this case, dependency proceedings had been going on for over a year and father caused many delays by being uncooperative with court orders and making many lengthy statements to the court that often digressed into irrelevant matters. The appellate court could anticipate father defending

himself in the same way, causing significant delay. In addition, the appellate court found that any error in denying father's requests to represent himself was harmless because the case hinged on witness credibility and father testified before his first request for self-representation. (JC)

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

#### **ABANDONMENT; Fam. Code § 7822**

*Adoption of Allison C.* – Filed June 30, 2008, ordered published July 11, 2008; Fourth Dist., Division Three

Docket No. G039141

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G039141.DOC>

Child was born in 2001. Mother and child lived with father on and off until child was 6 months old. Mother then left father due to domestic violence, and father was incarcerated for 1 ½ years. After his release in 2003, he visited the child at a relative's home until mother found out and stopped these visits. Father went back to prison for burglary for another 2 years. When he was released, mother expressed concern about visitation to his parole officer, and the parole officer prohibited him from visiting the child. Mother married in 2005, and her husband petitioned to adopt child. Family court granted stepparent adoption, without father's consent, on grounds that father had abandoned child by leaving her with mother for over one year without support or communication. Father appealed. Affirmed. Although father may not have intended to abandon child permanently, his conduct falls within the definition of abandonment in Fam. Code § 7822 because he did not try to obtain custody or provide support for the child. Father's incarceration is not a defense, because the conduct that caused father to be incarcerated was voluntary. (MM)

### **OTHER LEGAL DEVELOPMENTS**

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

##### **For Your Information (FYIs):**

##### **Procedural Guide:**

0100-510.40 (REV) Teen Parents In Foster Care

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051040v0708.doc>

This procedural guide was updated with information on which caregivers may become Whole Family Foster Homes (WFFH) and information on extending WFFH benefits to KinGAP placements. It was also amended to clarify the group home rates for dependent

infants placed with their teen parent and discussed continuing the Shared Responsibility Plan (SRP) rate for KinGAP families under specified circumstances. (SA)

0100-520.70 (REV) 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/0100/010052070ExmptV0708.doc>

This procedural guide, which informs CSWs that they must check the child abuse and neglect registry of any state in which a prospective caregiver or any other adult in the home has resided in the past five years, if that state maintains a registry, was revised to reflect that the Kinship Support division is now called the ASFA Division. (SA)