



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

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Written by: Martha Matthews (MM), Jenny Cheung (JC), Patricia Bell (PB) and Sophia Ali (SA)

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### **NEW DEPENDENCY CASE LAW**

#### **JURISDICTION**

***In re J.K.*** – filed May 18, 2009 and published June 17, 2009, Second Dist., Div. Seven  
Docket No. B210150

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B210150.DOC>

Father appealed the jurisdictional findings arguing that the court erred in concluding that one incident of sexual abuse committed approximately six years before the petition was filed and one incident of physical abuse about two years before demonstrated that the child was at risk of future harm. Parents divorced when the child, J.K., was 2 years old and J.K. had sporadic visits with her father since the divorce. When J.K. was 15 years old, she disclosed in therapy that her father raped her on one occasion when she was younger. She also disclosed that on one other occasion when she was about 13 years old and staying with father for a week, he struck her on the shoulder, causing it to become dislocated. At the jurisdictional and dispositional hearing, father's counsel did not present any evidence, submitted on the reports, and made a motion to dismiss under WIC 350(c) arguing that DCFS had not met its burden of proof. Father's counsel argued that the one incident of sexual abuse was remote in time and that only one incident of physical abuse had occurred and that DCFS failed to demonstrate a current risk to the child. The juvenile court denied the motion to dismiss, sustained the allegations in the juvenile dependency petition, ordered the child placed with the mother at disposition and terminated jurisdiction with a family law order. Father timely appealed but did not deny the sexual or physical abuse on appeal.

Affirmed. The appellate court first noted that the father's appeal was not rendered moot by termination of jurisdiction because the sustained jurisdictional findings against him have had

an adverse effect on his custody rights, a stay-away order remained in effect, and the jurisdictional findings could affect father in the future if further dependency proceedings were initiated. The appellate court found that the juvenile court may exercise jurisdiction based on findings of prior instances of serious harm or abuse. In looking at the totality of the circumstances and putting father's conduct in the proper context, father did not have daily or regular contact with the child, so while the sexual abuse was remote in time, father's opportunities to inflict harm upon the child were limited. In addition, father downplayed the physical abuse, failed to take any steps to address his behavior, and dislocated his child's shoulder just two years prior to the initiation of proceedings. Due to the severity of the incidents and the fact that there was not a substantial lapse in time between the two instances of abuse and the filing of the petition, the appellate court found that substantial evidence supported the juvenile court's findings that the child was at substantial risk of physical and emotional harm. (JC)

### **WIC 388 PETITIONS; APPEALABILITY**

*In re A.S.*- filed June 19, 2009, Fourth Dist., Div. Two

Docket No. E045331

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E045331.DOC>

Father stipulated to termination of dependency jurisdiction with a family law order granting legal and physical custody of A.S to the mother and visitation for father. Although father subsequently filed a motion to set aside the stipulation, the juvenile court denied his motion and terminated jurisdiction. Six years later, father filed a WIC 388 petition asking the juvenile court to set aside its original jurisdiction findings primarily because the agency conducted an administrative review and changed the "substantiated allegation conclusion" to "unfounded" and removed the allegation from the Child Abuse Central Index (CACI). The juvenile court summarily denied the father's petition and father appealed.

Appeal dismissed. WIC 388 subdivision (a) specifies that any person having an interest in a child who *is a dependent child of the juvenile court* may petition the court *in the same action in which the child was found to be a dependent child of the juvenile court* for a hearing to change, modify, or set aside a previous court order. Because the juvenile court terminated jurisdiction over A.S. six years earlier, it no longer had jurisdiction of the parties and therefore lacked any ability to act at the time the father filed the WIC 388 petition. As no further action can be taken in this matter and only the Legislature has control over changes to the right to appeal, the appeal must also be dismissed. Finally, even if the juvenile court had jurisdiction, father's WIC 388 petition does not set out any relevant new facts that show he did not engage in the acts that resulted in the dependency petition being filed. The only new information in father's WIC 388 petition is that the agency changed the substantiated allegation to unfounded and removed his named from the CACI. However, the letter the agency sent notifying father of its action does not include any information to connect the agency's action to an allegation made in connection with A.S. or her dependency proceeding. (SA)

## NON DEPENDENCY CASES OF INTEREST

### **PARENTAGE; FAM. CODE §§ 7611(d), 7570**

*Kevin Q. v. Lauren W.* – filed June 19, 2009, Fourth Dist., Div. Three

Docket No. G040343

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G040343.PDF>

Lauren W. and Kevin Q. began a relationship when Lauren was pregnant with Matthew W. After Matthew was born, they lived together for 20 months, then separated. Kevin filed a paternity action under Fam. Code 7611(d), claiming he had held Matthew out as his child, and sought custody of Matthew. Lauren opposed this action, and a few months later Lauren and Matthew's biological father, Brent, signed a voluntary declaration of paternity and filed it with the county child support agency. The trial court weighed Kevin's paternity claim against Brent's, and ruled that Kevin was Matthew's father. Lauren appealed. Reversed. When the parents sign and file a voluntary declaration of paternity under Fam Code §§7570 et seq., it has the same effect as a paternity judgment by a court, and cannot be trumped by a competing presumption of paternity. A voluntary declaration of paternity can only be set aside if there is proof that the man who signed it is not the biological father, under § 7575. (MM).

## OTHER LEGAL DEVELOPMENTS

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

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

09-30            Family Group Decision Making (FGDM) for Pregnant and Parenting Teens (PPT)

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0930FGDMPPT.doc>

This FYI provides information regarding "Pregnant and Parenting Teen Family Group Decision Making." It is a proactive tool intended to identify and discuss issues related to pregnancy and early stages of child rearing with a long term goal of breaking intergenerational cycles of children being brought into the child protection system. The conference is meant to assist with problems with placement for the pregnant mother, school issues for the pregnant/parenting minor, medical and family planning issues during the pregnancy and in providing care for the newborn child, parenting education and mentoring for minor mother and father, family law issues of the mother and father, identifying and engaging family and community support persons to assist the mother and father to take part in the services and develop as parents, and issues between the minor mother and father's family that could impede the mother in providing pre-natal care and parenting or could keep the child from developing a relationship with the father and being supported by the entire extended family. According to the FYI, the minor's attorney must be notified within 72 hours of the

conference date so that the attorney can assist DCFS in encouraging the minor to participate. However, the attorney is not allowed to participate. (SA)

**Procedural Guides:**

0050-503.85 (REV) Sensitive Referrals/Cases

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050385Sensitivereferralsv050.doc>

This procedural guide was revised a third time to indicate that all Child Protection Hotline SCSWs with ARA approval can seal a referral when the facts of the referral require a higher level of security. (For example, SCSWs can seal a referral when the perpetrator is a public figure, DCFS employee, law enforcement officer, etc.) (SA)

0070-548.11 (REV) Cross-Reporting Responsibilities at the Conclusion of a Child Abuse Investigation

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054811v0609.doc>

This procedural guide updated the procedure for notifying the alleged perpetrator of a report to the Child Abuse Central Index. (SA)

0080-502.25 (REV) Assessment Process to Terminate Child Welfare Services

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050225V00609.doc>

This procedural guide was updated with instructions to ensure the provision of the birth certificate to the legal guardian and/or youth prior to case closure. Non-substantive changes were also made to further clarify the procedures and to reflect current practice. (SA)

0080-507.20 (REV) Concurrent Planning and the Concurrent Planning Assessment (CPA)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050720v0609.doc>

This procedural was updated with information to assess the prognosis for reunification for an incarcerated parent, such as, the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations, etc. (SA)

0100-510.10 (REV) Capacity in a Relative/Non Relative Extended Family Member/Foster Family Home or FFA Certified Home

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051010v0609.doc>

This procedural was updated with information on Intensive Treatment Foster Care Foster Family Agency certified homes. It was also updated to notify DCFS staff that it is DCFS policy that an out-of-home caregiver may not have more than two children receiving, needing, qualifying for or eligible to receive a specialized care rate in one home, regardless of the caregiver's licensed capacity. (SA)

0100-520.35 (REV) Kinship Guardianship Assistance Payment (KIN-GAP) Program

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052035v0609.doc>

This procedural guide was updated a second time with instructions on providing the child's birth certificate to the legal guardian prior to terminating jurisdiction. (SA)

0200-509.35 (REV) Adoptive Placement

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050935v0609.doc>

This procedural guide was revised to include further instructions about the time frame birth parents have to file an appeal after termination of parental rights when the order was made by a referee or commissioner. Further, information was included about informing prospective adoptive parents who adopted a child at any point after the child's 13<sup>th</sup> birthday that their income would not be included in the calculations for determining the child's financial need for college. (SA)

0300-503.75 (REV) Child Death, Serious Injury or Illness Reporting Responsibilities

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050375v0609.doc>

Non substantial changes were made to this procedural guide to reflect updated names of other Procedural Guides and forms. (SA)

0900-503.10 (REV) Back To School Clothing Allowance

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090050310v0609.doc>

This procedural guide was revised to clarify the eligibility criteria and the procedures for issuing the back-to-school clothing allowance. (SA)

1200-500.10 (REV) Obtaining Vital Records (Birth, Death, Marriage and Divorce)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050010VitalRecordv0609.doc>

This procedural guide, which cancels FYI 08-21 “Vital Records Requests And Status Tracking Log” dated 05/08/08, added instructions to ensure the provision of the birth certificate to the legal guardian and/or youth prior to terminating jurisdiction. (SA)

E080-0510 (REV) An Initial Determination For Eligibility Has Not Been Completed For A Child In Out-Of-Home Care Or The Initial Eligibility Determination Is Found To Be In Error

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E080/E080-0510v0609.doc>

This procedural guide, which discusses circumstances in which a child has been placed in out-of-home care without an initial determination of eligibility having been completed or not completed correctly, was revised to clarify the eligibility worker’s responsibilities as well as the time frame for the new eligibility worker to “loan back” a case for correction when s/he discovers that the initial eligibility determination is inaccurate. (SA)

E100-0510.10 (REV) CWS/CMS Computer Application Assignment Actions

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E100/E0100051010.doc>

This procedural guide was revised to reflect updated work practices of the Eligibility Worker who is responsible for recording the foster care placement and eligibility determinations on the Child Welfare Services / Case Management System. (The term, “Eligibility Worker” may refer to the Technical Assistant, Intake Eligibility Worker, or Redetermination (Case Carrying) Eligibility Workers. This includes all the programs covered under Foster Care, including Probation, Adoptions Assistant, Kin-GAP, Emergency Assistance and Medi-cal.) (SA)

E100-0520 (REV) Income Evidence Verification Systems (IEVS)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E100/E01000520v0609.doc>

This procedural guide was revised to reflect the responsibilities of the Intake Eligibility Supervisor, the Intake Eligibility Worker, and the Redetermination Eligibility Worker. (SA)