



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

Vol. 5, No. 20 November 10, 2009

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

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

© 2009 by Children's Law Center of Los Angeles (“CLC”). All rights reserved. No part of this newsletter, except those which constitute public records, may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing from CLC. Cases reported may not be final. Case history should be checked before relying on a case. Cases and other material reported are intended for educational purposes only and should not be considered legal advice.

For more information on Children's Law Center, please visit our website at www.clcla.org.

NEW DEPENDENCY CASE LAW

ICWA

In re J.B.- filed October 26, 2009, Fifth Dist.

Docket No. F056765

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F056765.DOC>

The mother claimed that the juvenile court erred by removing her daughter from her custody and placing her with her non custodial father at disposition, without making a finding supported by expert testimony, that continued custody by the mother was likely to result in serious emotional or physical damage to the daughter.

Affirmed. WIC 361(c)(6) requires that in an “*Indian child custody proceeding*,” the juvenile court must find by clear and convincing evidence that “continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child” and further requires that such a finding be supported by testimony from a qualified expert witness. WIC 224.1(c) defines an “*Indian child custody proceeding*” as a child custody proceeding within the meaning of the ICWA, including a proceeding for temporary or long-term foster care or guardianship placement, termination of parental rights, pre-adoptive placement after termination of parental rights, or adoptive placement. Similarly, the ICWA defines a “*child custody proceeding*” as a foster care placement, which is “any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.” Here, because the child was placed with her father after removal from the mother, a finding under WIC 361(c)(6) and the expert testimony to support it were not required. (SA)

LEGAL GUARDIANS; REUNIFICATION SERVICES; WIC 366.3

In re Z.C. – filed October 2, 2009 and published November. 2, 2009, First Dist., Div. Two
Docket No. A123994

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A123994.DOC>

Child was detained a birth, and placed with maternal aunt, who became her legal guardian two years later. When child was 16 years old, county agency filed WIC 387 petition seeking more restrictive placement, because the guardian was in poor health and could not control the child's behavior. Juvenile court granted the WIC 387 petition and ordered reunification services, as recommended by the agency. Six months later, the county agency argued that the services should be terminated; child's attorney and guardian's attorney argued that there was no six month time limit for reunification services under WIC 366.3. Court ordered further services. Agency appealed.

Affirmed. WIC 366.3(b) should be interpreted as giving the juvenile court the authority to order reunification services for a legal guardian, not just recommend that the agency provide services. (MM)

REASONABLE REUNIFICATION SERVICES

In re Calvin P.- filed October 8, 2009 and published October 27, 2009, Fourth Dist., Div One
Docket No. D054830

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F056765.DOC>

After the county agency filed WIC 342 petitions with additional allegations against the mother, the court sustained the petitions, placed the children with the father, ordered family maintenance services for the father and a reunification case plan for the mother, and set a six-month review hearing. At the six-month review, the court stated that if it had to determine whether the mother had been provided reasonable services it would not be able to make such a finding based on the social worker and mother's counselor's testimony, but found that the issue was moot because the children were placed with their father. The court then ordered family maintenance services for the family, rather than reunification services for the mother, and set a six-month review hearing under WIC 364. Mother and children appealed.

Reversed. Because the court exercised its discretion to order reunification services for the mother when it sustained the WIC 342 petitions and placed the children with the father, but the agency disregarded the order, the order must now be implemented to provide the mother with reasonable reunification services. When a juvenile court sets a WIC 366.26 hearing and a parent for whom the court had ordered reunification services has not received reasonable services, the reviewing court will vacate the order setting the WIC 366.26 hearing so that the services may be provided. Here, although the family is not headed toward termination of parental rights, the remedy for the mother not receiving the court-ordered services is the same. (SA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-55 New Procedures For Requesting Probation Records

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0955RequestingProbationRecords.doc>

This FYI is to advise DCFS staff that effective immediately, when requesting information from the Probation Department regarding an adult client, they are now required to complete the DCFS 4389-1 “Declaration In Support of Access to Probation Records.” (SA)

09-61 Recommendation Order to Court for Mental Health / Development Assessment and Release Information

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0961MentalHealthCourtorder.doc>

This FYI is to advise social workers that the recommendation order that they must submit to Court for Mental Health/Developmental Assessment and Release of Information has been revised. (SA)

Procedural Guides:

0300-303.15 (REV) Writing the Detention Report

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030315v1009.doc>

This procedural guide was revised to include instruction regarding the documentation of parental consent for mental health and/or developmental assessment and services and authorization for disclosure of child’s protected health information. It was further revised to inform social workers that the recommendation order that they must submit to Court for Mental Health/Developmental Assessment and Release of Information has been updated. (SA)

0600-500.05 (REV) Multidisciplinary Assessment Team (MAT)

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050109v1009.doc>

This procedural guide was updated to inform social workers that the recommendation order that they must submit to Court for Mental Health/Developmental Assessment and Release of Information has been revised. (SA)

0600-500.20 (REV) Protected Health Information/Medical Information: Access and

Sharing

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050020PMIv1009.doc>

This procedural guide was updated to inform social workers that the recommendation order that they must submit to Court for Mental Health/Developmental Assessment and Release of Information has been revised. (SA)

0600-501.09 (REV) Consent for Mental Health and/or Developmental Assessment and Services

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050109v1009.doc>

This procedural guide was updated to inform social workers that the recommendation order that they must submit to Court for Mental Health/Developmental Assessment and Release of Information has been revised. (SA)