



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASE LAW**

#### **JURISDICTION**

*In re Alexis E.*— filed January 23, 2009, Second Dist., Div. Three

Docket No. B207752

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B207752.DOC>

Father appealed challenging the juvenile court's findings that he has a history of substance abuse and that his current use of medical marijuana placed his children at risk of harm. The children were detained from the father due to emotional abuse stemming from two physical altercations between father and his girlfriend in the presence of the children. Mother told the social worker that she had also been a victim of father's domestic abuse but she never reported it because father threatened to kill her if she did. The children told the social worker that father stayed in the bedroom all day with his girlfriend and smoked cigarettes that smell bad. They also reported that father was hardly around, needed to practice “being nicer and calmer,” and used corporal punishment by hitting them on the head and pulling their ears. In addition, contrary to father stating that he used prescribed marijuana for pain management after knee surgery, mother stated that father was using marijuana in high school long before he had a prescription for it. The juvenile court found that father's marijuana use placed his children at risk and ordered him into drug treatment.

Affirmed. Father argued that the juvenile court presented him with an untenable choice of either giving up his legal use of medical marijuana or not reuniting with his children. The appellate court stated that while it is true that the mere use of marijuana by a parent will not support a finding of a risk to children, the risk to the children in this case was not speculative. There is a risk to the children of the negative effects of second hand marijuana smoke.

Further, father's marijuana use made him irritable with the children and violent towards his girlfriend. The appellate court also stated that the issue was not father's right to use marijuana, but the protection of the children. Because the juvenile court found that father's use of marijuana presents a risk to the children, it did not abuse its discretion in ordering drug counseling and testing. (JC)

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

#### **PARENTAGE; FAMILY CODE 3041(c)**

*Scott v. Superior Court* – filed Fed. 25, 2009, Third District  
Docket No. C059686

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C059686.DOC>

Bill and Rachel had three children in 1997, 1998, and 1999. Bill moved out in 2000, and began living with another woman, Jan. In 2001, the children were detained from Rachel due to her drug problem. Bill obtained sole custody of the children in 2001. Bill and his children lived with Jan until 2008. He then moved out with the children. Jan filed a joinder motion in the 2001 custody case, seeking custody under Family Code 3041(c) (allowing nonparent to obtain custody if parental custody would be detrimental to child). The trial court granted the motion. Bill filed a writ petition. Writ granted. Jan is not a presumed mother, because the children already have two parents—Bill and Rachel. As a nonparent, she cannot seek custody of the children by joining in an inactive custody case that was settled years ago. Fam. Code 3041(c) applies only when there is an active custody case between the parents. Jan's only remedy would be to file a guardianship petition. (MM).

### **OTHER LEGAL DEVELOPMENTS**

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

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

08-55 (REV) Multidimensional Treatment Foster Care (MTFC)

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0855MTFCrevised.doc>

This FYI replaces the prior version dated 11/18/08 and it describes the purpose of the MTFC program, its goals, criteria for qualification, what the treatment consists of, and the referral process. (SA)

09-11 Trends and Practices in Kinship Care

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0911Kinship.doc>

According to this FYI, as majority of out-of-home placements of foster children are with older adult relatives living on fixed incomes, DCFS staff must monitor the individual needs of these caregivers in addition to the needs of the group and link them to available services and support systems within their communities. Staff must establish community-based collaborations in order to expand the necessary fiscal and material resources available to each community, and become more aggressive in efforts to engage the communities in participating in a service and support model that promotes and empowers individuals, families, and communities in becoming self-sustaining. (SA)

09-12 Expansion of the Dependency Court Youth Substance Abuse Program

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0912YouthSubstanceAbuseProgram.doc>

This FYI is to notify staff that effective March 2, 2009, the Dependency Court Youth Substance Abuse Program expanded to ALL courtrooms at Edmund Edelman Children's Court. Antelope Valley Children's Court will begin in the near future. (SA)

**Procedural Guide:**

0600-508.00 (REV) Foster Youth Substance Abuse Services

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050800FosteYouthSubstanceAbuseServicesv0309.doc>

This procedural guide was revised to reflect the expansion of the Dependent Youth Substance Abuse program to all courtrooms at Edmund Edelman Children's Court, effective, March 2, 2009. Antelope Valley Children's Court will begin in the near future. (SA)