Children's Law Center
of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

APPEALABILITY

In re Javier G. – filed June 30, 2005, Fourth Dist., Div. One
Docket No. D045617
Link to case: http://www.courtinfo.ca.gov/opinions/documents/D045617.DOC

The jurisdictional findings on a Welf. & Inst. Code § 387 supplemental petition are interlocutory and nonappealable; as with jurisdictional findings made on a Welf. & Inst. Code § 300 petition, they may be challenged on appeal from the dispositional order. (CS)

CONFIDENTIALITY OF JUVENILE COURT RECORDS

In re Anthony H. – filed May 17, 2005, Fourth Dist., Div. Two
Docket No. E036100, E036595
Link to case: http://www.courtinfo.ca.gov/opinions/documents/E036100.DOC

Excepting the persons and entities listed in Welf. & Inst. Code § 827(a)(1)(A)-(N), the juvenile court has the exclusive authority to decide who can access juvenile court records. While the presiding judge of the juvenile court may designate judicial officers to make decisions regarding the release of records, only judicial officers of the juvenile court can be designated under Cal. Rules of Court 1423(b). Although a grandmother ultimately filed three § 827 disclosure petitions, there was no res judicata preventing consideration of the third petition as the first petition was summarily denied and the second petition was transferred to a federal court that declined to consider it on its merits. Since none of the three petitions was ever considered on the merits and the third petition did provide adequate specificity to determine what records the grandmother sought, the case was remanded to allow the juvenile court to adequately consider the last petition. (DE)

GUARDIAN AD LITEM

In re C.G. – filed May 5, 2005, Second Dist., Div. Four

Docket No. B175094
Link to case: http://www.courtinfo.ca.gov/opinions/documents/B175094.DOC

A court cannot appoint a guardian ad litem for a parent without first determining whether the parent consents to the appointment or makes "an inquiry sufficient to satisfy [the court] that the parent is, or is not, competent" and ascertaining if "the parent understands the nature of the proceedings and can assist the attorney in protecting his/her rights." Where the court appoints a g.a.l. at the detention hearing without following these requirements for a parent who is present and able to communicate with the court, the court's error is structural and requires automatic reversal even absent any showing of prejudice. (DE)

GUARDIANSHIP

In re Carlos E. – filed June 7, 2005, First Dist., Div. Two
Docket No. A108890
Link to case: http://www.courtinfo.ca.gov/opinions/documents/A108890.DOC

Recognizing a distinction between probate guardians and guardians appointed through the dependency process, the Court of Appeal explains the process for creating and terminating a guardianship in a dependency case. A dependency guardianship may be created if the parents waive services and agree to the guardianship under Welf. & Inst. Code § 360; or, a guardianship may be granted under § 366.26(b)(3) if the parents fail to reunify with the child. Following creation of the guardianship, a court may continue to supervise the case or may terminate dependency jurisdiction and retain "jurisdiction over the child as a ward of the guardianship." Any subsequent action, other than adoption or emancipation, seeking to terminate the dependency guardianship must be held in the dependency court, with Welf. & Inst. Code § 388 controlling the process for terminating the guardianship. Using the approach outlined in Cal. Rules of Court 1466(c), a court has three options in considering a petition to terminate a guardianship: 1) deny the petition; 2) deny the petition and request the child welfare agency provide services to the child and guardian under Welf. & Inst. Code § 301; or 3) grant the petition and terminate the guardianship. With this analysis, the appellate court found neither a requirement that a guardian receive reunification services prior to termination nor a requirement that a trial court find adequate reunification services were offered to the guardian. In a footnote, the appellate court acknowledged that Welf. & Inst. Code § 387, not § 300, appears to provide the appropriate mechanism for actually detaining a child from a dependency guardian and placing the child in foster care. (DE)

ICWA

In re Jonathon S. – filed May 11, 2005, Fourth Dist., Div. Two
Docket No. E037183
Link to case: http://www.courtinfo.ca.gov/opinions/documents/E037183.DOC

A mother had standing to raise an ICWA notice violation in an appeal from termination of parental rights even though she herself was not Indian. The ICWA provides rights to non-Indian as well as Indian parents. However, only the order terminating parental rights was subject to reversal. Invalidation of any prior orders that had not been timely appealed required that a petition under the ICWA's enforcement provision, 25 U.S.C. § 1914, be brought in the juvenile court; only after the juvenile court ruled on the petition did the appellate court have jurisdiction to review the issues on

appeal. In so holding, the court acknowledged that it disagreed with other appellate courts on this issue.

Practice Tip: As the court noted in its directions on remand, the California Rules of Court now require the juvenile court to wait 60 days after ICWA notice has been sent before finding that the ICWA does not apply unless a determinative response is received from the tribe(s) before 60 days. (Cal. Rules of Court 1439(f)(6).) (CS)

In re S.B. – filed June 30, 2005, Fourth Dist., Div. Two
Docket No. E036823
Link to case: http://www.courtinfo.ca.gov/opinions/documents/E036823.DOC

The social worker did not learn that the child had Indian ancestry until the hearing at which the Welf. & Inst. Code § 366.26 hearing was set. Thereafter, the Cherokee Nation was noticed, the mother and child became members of the tribe, and the tribe intervened. The child was placed with an Indian fost-adopt family with the tribe's approval. The court terminated parental rights, applying the ICWA's heightened standards. The appellate court rejected the mother's argument that the social worker and juvenile court had failed to timely perform their duty under the ICWA to inquire into the child's Indian ancestry and therefore that the juvenile court's findings and orders made prior to the termination hearing should have been invalidated. The mother had waived the argument by not raising it in the juvenile court at the first opportunity; parents may not waive an Indian tribe's rights under the ICWA, but they may waive their own rights. In any event, the fact that the social worker's initial reports said that the ICWA did not apply and that the ICWA checkboxes on the petition were left blank constituted sufficient evidence that a timely inquiry was made. Furthermore, any error was harmless as to the mother. The substantive provisions of the ICWA do not apply to detention nor review hearings because they do not involve a foster care placement within the meaning of the ICWA. (CS)

See also *In re Aaron R.*, Docket No. A107639, under Standing.

PATERNITY

In re Angela A. – filed May 26, 2005, Second Dist., Div. Two
Docket No. B175633
Link to case: http://www.courtinfo.ca.gov/opinions/documents/B175633.DOC

The conclusive marital presumption of Fam. Code § 7540 should not have been applied to defeat a stepfather's motion for presumed father status under Fam. Code § 7611(d) because the legislative purpose of the marital presumption was not served in this case. Angela's biological father was also her conclusively presumed father under Fam. Code § 7540, as he was married to and cohabiting with the mother at the time of Angela's birth. However, Angela, age 15, had virtually no contact with her father since she was two years old. For the past 12 years she had lived with her mother and stepfather, who had treated her as his daughter. She did not want any relationship with her biological father. Applying the conclusive marital presumption under these circumstances would have led to the absurd result of protecting a family unit that had not existed for 12 years and of giving Angela a father she had never really known and who had never supported her. Moreover, the stepfather qualified as a presumed father under Fam. Code § 7611(d) since he had received Angela into his home and held her out as his natural child. Under Fam. Code § 7612, the juvenile court should have considered whether this was an appropriate case to allow rebuttal and whether the stepfather's presumption was founded

on the weightier considerations of policy and logic, giving the greatest weight to the child's well being. (CS)

RIGHT TO COUNSEL

In re Michelle C. – filed June 23, 2005, Fourth Dist., Div. One
Docket No. D044991, D045491
Link to case: http://www.courtinfo.ca.gov/opinions/documents/D044991.DOC

The juvenile court deprived a mother of her statutory and due process right to the assistance of counsel by terminating her parental rights at a Welf. & Inst. Code § 366.26 hearing at which neither the mother nor her attorney were present. The mother had not waived her right to be represented at the hearing, either expressly or impliedly; mother and her attorney were present at the previous hearing and the mother's attorney called the court on the day of the termination hearing stating that he was detained in trial on another matter. By proceeding with the hearing in the absence of both the mother and her attorney, the juvenile court also denied the mother any meaningful opportunity to be heard, violating her constitutional and statutory due process rights. The court concluded that the error in this case was structural and required automatic reversal, disagreeing with *In re Malcolm D.* (1996) 42 Cal.App.4th 904, which applied a harmless error analysis. (CS)

STANDING

In re Aaron R. – filed June 23, 2005, First Dist., Div. One
Docket No. A107639
Link to case: http://www.courtinfo.ca.gov/opinions/documents/A107639.DOC

While the right of appeal will reach only to a "party aggrieved" by an appealed order, the denial of a grandmother's Welf. & Inst. Code § 388 petition did deprive her of an opportunity to claim preferential consideration in the selection of the adoptive parent as provided by Welf. & Inst. Code § 366.26(k). Based on the preference the grandmother would have received if her § 388 petition were granted, the Court of Appeal found the grandmother sufficiently aggrieved to receive standing in appealing the denial of the petition. After recognizing grandmother's standing, the court found the trial court acted within its discretion in denying the petition, particularly given the length of time her grandson was placed with a non-related prospective adoptive parent. Addressing a potential ICWA issue, the appellate court stated that the grandmother's comment she belonged to a "Black Native American Association" fell "far short" of giving the court reason to know that her grandson may be an Indian child. Further, it held that the trial court had no obligation to make an additional inquiry absent "evidence supporting a reasonable inference" that her grandson might have Indian heritage. (DE)

TERMINATION OF REUNIFICATION SERVICES

Katie V. v. Superior Court – filed June 22, 2005, Fourth Dist., Div. One
Docket No. D045980
Link to case: http://www.courtinfo.ca.gov/opinions/documents/D045980.DOC

When terminating family reunification after six or 12 months of services, a trial court must find by clear and convincing evidence that the child welfare agency offered the parent reasonable services. By the time of the 18-month review hearing, however, the parent will have received "services beyond what the juvenile law ordinarily contemplates" and absent "exceptional circumstances" the reunification period is over and "the child's interest in stability is paramount." In this situation, requiring clear and convincing evidence "would run counter to the child's best interests." Moreover, since Welf. & Inst. Code § 366.22 is silent as to the standard of proof, preponderance of the evidence is the proper standard at the 18-month review hearing when deciding if the child welfare agency offered a parent reasonable services. Recognizing that a Legislative Counsel's Digest regarding a bill amending Welf. & Inst. Code § 366.22 did require clear and convincing evidence at the 18-month hearing, the appellate court emphasized that a Digest may be "entitled to 'great weight'" but does not carry the force of law and must be disregarded if it misstates existing law. (DE)

TERMINATION OF PARENTAL RIGHTS

In re Joshua G. – filed May 10, 2005, Fourth Dist., Div. One
Docket No. D044973
Link to case: http://www.courtinfo.ca.gov/opinions/documents/D044973.DOC

A child welfare agency was not estopped from reporting to the court the adoptability of a child, despite an earlier agreement with the parents that it would recommend guardianship, where the parents knew the court could terminate parental rights if they failed to reunify. Moreover, as the agency has a duty to the child, as well as the court, to provide accurate information about which permanent plan is most appropriate, it would violate public policy if the agency subordinated the child's interests to its agreement with the parents. The Court of Appeal found that Code of Civ. Proc. § 128, which allows a court to control its process and orders so as to conform to law and justice, does not apply in dependency cases. Addressing the parent's § 128 motion on the merits, however, the appellate court ruled that the trial court did not abuse its discretion in denying the motion, even if the child welfare agency violated the spirit of its agreement with the parents to recommend guardianship, because the parents were on notice that the child's counsel would seek termination of parental rights and had been told that the court was considering terminating rights. Regarding a claim that the wishes of the children were not adequately considered, the appellate court noted the children were five and seven and found a social worker's attempts to discuss the concept of adoption with the children adequate, as the trial court is under no obligation to follow a child's wishes until the child is 12 years old. In an aside, the appellate court pointed out a number of errors that occurred in this case because of the misapprehension of the trial court and trial counsel that dependency cases are taken against parents. The Court of Appeal felt it necessary to remind the participants that dependency cases "are designed to protect the child, not to punish the parent." (DE)

UCCJEA

In re A.C. – filed June 28, 2005, Fourth Dist., Div. One
Docket No. D045073
Link to case: http://www.courtinfo.ca.gov/opinions/documents/D045073.DOC

A California juvenile court lacked subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act over a gravely ill Mexican child who was in California to receive specialized medical care not available where she lived in Tijuana, Mexico, but who had not been

neglected nor abandoned by her parents. The juvenile dependency law cannot be used to shift responsibility for medical care of a foreign national child from her parents and their home state, Mexico, to San Diego County and its taxpayers. (CS)

NON-DEPENDENCY CASES OF INTEREST

FOSTER FAMILY AGENCIES (FFAs)

Hosanna Homes v. County of Alameda Social Services Agency – filed June 8, 2005, First Dist., Div. Two
Docket No. A103128
Link to case: http://www.courtinfo.ca.gov/opinions/documents/A103128.DOC

A foster family caring for two foster children chose to surrender its certification with Hosanna Homes FFA and to become recertified with another FFA due to a dispute about therapy for one of the children. Both the county child welfare agency and the juvenile court supported the children remaining with the foster family and their recertification with a new FFA. Hosanna Homes sued on breach of contract and other grounds, alleging that the recertification was illegal. The appellate court found nothing improper about the recertification, particularly where it was sanctioned by the juvenile court. (CS)

HAIR FOLLICLE TESTS

Deborah M. v. Superior Court of San Diego County – filed April 29, 2005, Fourth Dist., Div. One
Docket No. D045854
Link to case: http://www.courtinfo.ca.gov/opinions/documents/D045854.DOC

Under Fam. Code § 3041.5(a), court-ordered drug testing of parents in custody and visitation proceedings must conform to federal drug testing procedures and standards, which currently only allow for urine, not hair follicle, tests.

Practice Tip: Although Fam. Code § 3041.5 does not govern drug testing in dependency cases, the reasoning of *Deborah M.* would seem to offer good arguments against court-ordered hair follicle testing in dependency cases as well. (CS)

UNPUBLISHED CASES OF INTEREST

The following opinion(s) are unpublished and may not be cited as legal authority (Cal. Rules of Court 977(a)):

Reasonable Services

In re Ivan C. – filed June 3, 2005, Second Dist., Div. One
Docket No. B177130
Link to case: http://www.courtinfo.ca.gov/opinions/nonpub/B177130.DOC

The finding that the Los Angeles County Department of Children and Family Services (DCFS) had provided reasonable reunification services was not supported by substantial evidence where the father's drug addiction was the reason for removal and DCFS failed to provide the father with a random drug testing program that was compatible with his work schedule. The court reversed the order terminating reunification services. (CS)

CALIFORNIA LAW JOURNAL ARTICLES OF INTEREST

Michele Benedetto, *An Ounce of Prevention: A Foster Youth's Substantive Due Process Right to Proper Preparation for Emancipation*, Summer 2005, 9 UC Davis J. Juv. L. & Pol'y 381 [addresses challenges faced by emancipating foster youth, constitutional rights of youth in foster care, inadequacy of legislative responses to date, and specific legislative recommendations to aid emancipating youth]

William Wesley Patton and Amy M. Pellman, *The Reality of Concurrent Planning: Juggling Multiple Family Plans Expeditiously Without Sufficient Resources,* Winter 2005, 9 UC Davis J. Juv. L. & Pol'y 171 [addresses the shortfalls of concurrent planning, mandated by the federal Adoption and Safe Families Act, including inadequate services to reunify families and poor permanency planning for foster children]

OTHER LEGAL DEVELOPMENTS

Judicial Council Juvenile Forms Revised July 1, 2005 –

- JV-220 *Application and Order For Authorization To Administer Psychotropic Medication-Juvenile*

Link to form: http://www.courtinfo.ca.gov/forms/documents/jv220.pdf

- JV-245 *Application And Affidavit For Restraining Order-Juvenile*

Link to form: http://www.courtinfo.ca.gov/forms/documents/jv245.pdf

- JV-250 *Restraining Order-Juvenile (CLETS-JUV)*

Link to form: http://www.courtinfo.ca.gov/forms/documents/jv250.pdf

- JV-305 *Citation For Publication Under Welfare And Institutions Code Section 366.23*

Link to form: http://www.courtinfo.ca.gov/forms/documents/jv305.pdf

- JV-310 *Proof of Service-Juvenile Hearing Under Section 366.26 Of The Welfare And Institutions Code*

Link to form: http://www.courtinfo.ca.gov/forms/documents/jv310.pdf

Los Angeles Superior Court Local Rules Revised July 1, 2005 –

Highlights of changes included in the revised local rules:

Rule 17.5(c) creates a new authorization procedure for HIV/AIDS testing of detained children.

Rule 17.5(d) creates a new procedure regarding disclosure of an HIV/AIDS diagnosis.

Rule 17.7.1 adds a procedure for handling the voluntary inpatient or outpatient admission of a dependent child to a mental health facility.

Rule 17.9(a) adds language stating, "No person shall open records and documents delivered to the Court under seal pursuant to a subpoena unless and until directed to do so by the Court."

Rule 17.14(a) now requires that rehearing applications be personally served on all counsel or parties and that any response be filed within three days of service of the rehearing application.

Rule 17.15(b) is amended to require service of a motion on counsel not opposing the motion not less than 1 day before the hearing for personal service and not less than 3 days for service by first-class mail.

Rule 17.15(c) is added to allow requests for immediate hearings when an emergency situation exists.

Rule 17.16(c) and (d) revise the qualification and training requirements for appointed counsel representing adults and children in dependency cases.

Rule 17.16(e) and (f) add new practice guidelines for attorneys representing adults and children in dependency cases.

Rule 17.19(a) now states that all detention hearings should be conducted prior to the noon recess and that efforts should be made to finish all cases involving children in shelter care before noon.

Rule 17.22 has received extensive modification relating to the use of mediation in dependency cases.

Rule 17.23 has extensively modified the rules for mandatory settlement conferences.

Rule 17.25(b) now provides that if a court appoints an expert under Evid. Code § 730 the appointed expert's report is available for discovery.

Rule 17.29 was added to bring the juvenile court tort policy into the local rules.

Rule 17.30 was added and now requires that any petition filed pursuant to Welf. & Inst. Code § 331 must be filed in the office of the presiding judge.

Rule 17.31 adds new procedures for the handling of complaints against appointed dependency counsel.

Rule 17.32 was added to recognize that the juvenile court has the authority to issue blanket orders "necessary for court administration and case management."

Link to rules: http://www.lasuperiorcourt.org/courtrules/proposedruleseffectivejuly2005.htm
(Additions are in red)

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

Procedural Guides:

0400-503.05 Standards for Documenting Contacts (7/8/05)
0010-500.01 Notifying Children of Sensitive Sibling Information Contained in Court Reports (7/705)
0900-506.10 Clothing Allowances (6/8/05)
0300-318.05 Emergency Protective Orders and Restraining Orders (6/8/05)

For Your Information (FYIs):

05-40 The Mental Health Services Act (Prop. 63) (7/5/05)
05-38 DCFS Procedures For The Rest Assured Program (6/30/05)
05-37 Statewide Children's Services Intercounty Transfer Protocol (6/21/05)
05-34 CLETS and Live Scan Clearances (6/15/05)

Link to policies: http://dcfs.co.la.ca.us/ **DCFS Policy**