



“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

CONFLICT OF INTEREST/EFFECTIVE ASSISTANCE OF CHILD'S COUNSEL

In re Barbara R. – filed Mar. 20, 2006, Fourth Dist., Div. One

Docket No. D046405

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D046405.DOC>

In an appeal from termination of parental rights to her two daughters, one of whom, Jade, was an Indian child, the mother asserted that the minors' attorney had a conflict in representing both girls and had provided Jade with ineffective assistance of counsel by not investigating and protecting Jade's tribal benefits. The information before the court at the Welf. & Inst. Code § 366.26 hearing suggested that if the court ordered adoption for Jade, which the tribe opposed, Jade could lose substantial tribal benefits, including a \$1,500 monthly stipend. However, minors' counsel objected to admission of any evidence about tribal benefits, saying it was irrelevant to the issues at a § 366.26 hearing. Regarding the alleged conflict of interest, the court of appeal found that that the children did not have adverse interests. “A conflict arises where minor's counsel seeks a course of action for one child with adverse consequences to the other.” Here, the grandparents planned to adopt both girls. The three-year-old had lived with the grandparents virtually her whole life, and 10-year-old Jade wanted adoption. Adoption would also preserve the sibling relationship. The court also rejected that minors' counsel had been ineffective. It found that counsel had performed his duties under § 317(c) in concluding that it was in Jade's best interests to be adopted regardless of any loss of financial benefits from the tribe. Furthermore, the court presumed that minors' counsel performed his duty under § 317(e) to investigate other interests of the child beyond the scope of the dependency proceeding. Since counsel determined that Jade's interests in tribal membership did not require protection, he was not required to report those interests to the court under § 317(e) and Cal. Rules of Court, rule 1438(g)(2). One justice dissented, believing that Jade's counsel and guardian ad litem had been ineffective for not investigating and, if necessary, attempting to preserve Jade's tribal interests. (CS)

ICWA – TERMINATION OF PARENTAL RIGHTS

In re Barbara R. – filed Mar. 20, 2006, Fourth Dist., Div. One

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On appeal, the mother argued that the order terminating her parental rights to one of her daughters, who was an Indian child, violated ICWA because the requisite detriment finding was stale. Before the court may terminate parental rights to an Indian child, it must find evidence beyond a reasonable doubt, including a qualified expert witness, that continued parental custody will likely result in serious emotional or physical damage to the child. (25 U.S.C. § 1912(f); Cal. Rules of Court, rule 1439(m).) The finding generally should be made at the last review hearing, the hearing at which the Welf. & Inst. Code § 366.26 hearing is set. If that happens, the court does not need to readdress the detriment finding at the § 366.26 hearing unless the parent presents evidence of changed circumstances or shows the finding is stale because the § 366.26 hearing was held substantially beyond the 120-day statutory period. In this case, due to continuances, 11 months passed between the review hearing when the court made the detriment finding and the § 366.26 hearing. However, the mother did not meet her burden of showing a change of circumstances sufficient to raise doubt about the continuing validity of the detriment finding. The mother still had not complied with drug testing, had a history of physical altercations, had been dropped from her domestic violence program, and her anger had negatively affected her daughter, who wanted to be adopted. One justice dissented. (CS)

NON-DEPENDENCY CASES OF INTEREST

DELINQUENCY -- APPLICABILITY OF ICWA

In re Enrique O. – filed Mar. 13, 2006, Fifth Dist.

Docket No. F046608

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F046608.DOC>

A minor appealed from the juvenile court's findings that he committed sexual battery and vandalism, arguing in part that the court had erred in failing to send ICWA notices. The court had also ordered the minor removed from his mother and placed in a group home. Since Jan. 2005, Cal. Rules of Court, rule 1439(b) has required ICWA notice in all § 601 and § 602 proceedings where the child is either in or at risk of entering foster care. However, the ICWA itself expressly excludes placements "based upon an act which, if committed by an adult, would be deemed a crime." (25 U.S.C. § 1903(1).) Thus, it has long been assumed that ICWA does not apply to delinquency proceedings. The court of appeal rejected the minor's argument that the order placing him in a group home, even though it arose out of a § 602 proceeding, was "based on" his need for removal from his mother rather than his criminal acts. This was supported by the fact that the juvenile court had ordered and received a Welf. & Inst. Code § 241.1 report and had concluded that given the seriousness of the sexual offense, wardship rather than dependency was warranted. The court avoided interpreting rule 1439(b) to expressly contradict ICWA, which would render the rule invalid. Instead, it said that it might be possible for a § 602 filing that was based on a status offense (for example, underage drinking) that would not be a crime if committed by an adult to fall within ICWA. (CS)

DELINQUENCY -- INFORMAL PROBATION

Kody P. v. Superior Court -- filed Mar. 22, 2006, Third Dist.

Docket No. C50918

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C050918.DOC>

Under Welf. & Inst. Code § 654, youth probation department may provide "informal supervision" of a minor instead of filing a WIC § 601 or § 602 petition. The probation department must assess whether informal supervision is appropriate using the factors listed in Cal. Rules of Court, rules 1404, 1405. The minor in this case was 11 years old and was charged with misdemeanor sexual battery because he

allegedly “pinched a girl’s butt.” He was otherwise eligible for informal supervision but refused to admit the offense. He filed a writ challenging Butte County’s policy of requiring minors to admit the offense before being given informal supervision. Reversed. The Butte County policy is unlawful because § 654 does not require admission of guilt as a precondition to informal supervision, and rules 1404 & 1405 require an individualized assessment of all the factors listed. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0300-306.80 Transportation Requests to Bring Children to Court

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030680.doc>

This procedural guide has been revised to require the use of the online Transportation/Shelter Care Request System on LA Kids. Social workers are no longer allowed to fax court transportation requests. (DE)

For Your Information (FYIs):

06-18 Hurricane Katrina Evacuees Living in California Documentation in CWS/CMS

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0618HurricaneKKatrinaEvacuees.doc>

This FYI explains two new reporting categories regarding children evacuated to California because of hurricane Katrina. The first category will apply to youth who are dependents in the county or parish in their states of residence. These youth will be identified as sent by the ICPC process even though no formal ICPC request has yet been received by California. The second category will be for children who are evacuees referred to DCFS for allegations of abuse and neglect after coming to California. (DE)

