



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

APPEALS – PROFESSIONALISM IN APPELLATE BRIEFS

In re S.C. – filed April 7, 2006, Third Dist.

Docket No. C046784

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C046784.DOC>

In this case, mother appealed from jurisdictional and dispositional findings that her 15-year-old daughter, who had Down's syndrome and functioned at the level of child six or seven years old, had been sexually molested by her stepfather and that mother failed to protect her. While addressing the juvenile court proceeding, the court of appeal spent much more time discussing the brief filed on mother's behalf by her appellate counsel who had also served as mother's trial counsel. Mother's brief ran to over 76,000 words and 202 pages, well beyond the 25,500 words that is generally the limit in appellate briefs under Cal. Rules of Court, rule 33(b)(1). Focusing, almost exclusively, on the numerous flaws and lack of professionalism shown in the mother's brief the court noted that it “violate[d] rules of court; ignore[d] standards of review; misrepresent[ed] the record; base[d] arguments on matters not in the record on appeal; fail[ed] to support arguments . . .;” raised issues not appropriate in the appeal; challenged the integrity of an opposing party; was contemptuous of the trial judge; and “gratuitously and wrongly” insulted the daughter in this case. Addressing each of the 19 headings in the mother's brief, and rejecting each in turn, the court affirmed the juvenile court and then directed a copy of the opinion be forwarded to the State Bar of California. (DE)

ICWA – INQUIRY OF INDIAN ANCESTRY REQUIRED

In re J.N. – filed April 7, 2006, Fifth Dist.

Docket No. F048751

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F048751.DOC>

The failure of both the juvenile court and the agency to inquire regarding the Indian ancestry of a mother required remand of the case to allow for an appropriate investigation. Under Cal. Rules of Court, rule 1439(d), the court and agency “have an affirmative duty” to ask whether a child comes within ICWA. Subdivision (d)(2) of the rule requires social workers to ask parents if a child is an

Indian child or has Indian ancestors. Subdivision (d)(3) of rule 1439 requires that at a parent's first court appearance the parent complete a JV-190 "Parental Notification of Indian Status" form. Where, as here, there was no evidence in the record to indicate mother was ever asked about her child's Indian ancestry the court of appeal remanded the case to the juvenile court and ordered the appropriate inquiries take place. (DE)

VISITATION – DENIAL OF TELEPHONE CONTACT

In re J.N. – filed April 7, 2006, Fifth Dist.

Docket No. F048751

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F048751.DOC>

An incarcerated mother appealed from a juvenile court ruling that she not receive telephone contact with her son. The mother, who had been convicted for child cruelty and the voluntary manslaughter of another child, had not seen her son in nine years but had regularly communicated with him by telephone. After the son was detained and a petition sustained regarding allegations unrelated to mother, the court denied her reunification services under Welf. & Inst. Code § 361.5(b)(4), and denied her any contact with her son as "not in the best interest of that child." Under § 361.5(f) when a court does not order reunification services for a parent the "court *may continue to permit* the parent to visit the child unless it finds that visitation would be detrimental to the child." Interpreting this language, the court of appeal decided that the use of the word "may" is permissive and gives the juvenile court discretion to permit or deny visitation when reunification services are not ordered. Based on mother's long separation from her son, her son's apparent disinterest in contact, his severe emotional problems, and concerns telephone contact could further contribute to his emotional problems the juvenile court had a sufficient basis for limiting the contact. Even absent evidence that continued visitation would be detrimental to the son, the court of appeal held that the juvenile court had the authority to "deny visitation to an incarcerated parent who has been denied reunification services" and that in this case it did not abuse its discretion. (DE)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0050-504.05 Referral Assignment Criteria

Link to procedure:

http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050405RefferralAsignmentCriteria_000.doc

This procedural guide has been revised to clarify which regional office should receive a child's case when there is already an open case for the child's sibling. (DE)

0100-510.65 Placing Sibling Groups in Out-of-Home Care

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010051065placingsibtogether.doc>

A revision to this policy requires greater documentation of the social worker's efforts to keep sibling groups together in out-of-home care. (DE)

0100-520.11 When A Child Is Residing In The Home Of A Relative Or Non-Relative Extended Family Member That Does Not Meet Title 22 Approval Standards

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052011Title22Standards.doc>

This is a new policy that provides procedures social workers should use to place and/or maintain a child in the home of a relative or non-relative extended family member even if that home has deficiencies that violate the Title 22 placement standards. (DE)

0100-520.40 Out-of-Home Caregivers: Legal Consent Authority

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052040v0406.doc>

This guide has been revised to include references to Welf. & Inst. Code §§ 362.04 and 362.05, as well as Health & Safety Code § 1507.25 regarding the ability of caretakers to make decisions about the extra-curricular activities of children in their care. Using a “reasonable and prudent parent standard” a caretaker may decide what activities are appropriate for the child and may occasionally arrange for short-term babysitting of the child with out having to go through the normal licensing requirements. “Reasonable and prudent” is defined as “careful and sensible parental decisions that maintain the child’s health, safety, and best interest.” The policy also directs social workers not to substitute their judgment for that of the caretaker in an effort to override the caretaker’s decision. These important additions, growing out of the changes made by Assembly Bill 408, can greatly influence the quality of life of children in foster care and can help to improve the experiences of these children in out-of-home care. Given the significance of these changes it is important that all participants in the dependency system be made aware of these procedures. (DE)

0100-570.05 Quality-of-Life in Out-of-Home Care: Reporting Concerns

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010057005Qualityoflifev0406.doc>

This guide has been revised to include references to Welf. & Inst. Code § 362.04 regarding the ability of caretakers to arrange for occasional short-term babysitting with out having to go through the normal licensing requirements. “Short-term” is defined as less than 24 hours. The policy recognizes that along with traditional babysitting needs, short-term care is intended to allow for supervision by someone other than the caretaker that would enable a child’s participation in the types of extracurricular activity envisioned by Welf. & Inst. Code § 362.05. The policy also directs social workers not to substitute their judgment for that of the caretaker in an effort to override the caretaker’s decision. These changes, coupled with the changes to 0100-570.05, can greatly improve the experiences of children in out-of-home care and need to be brought to the attention of caretakers, social workers, and the court if they are not being followed. (DE)

For Your Information (FYIs):

06-23 Supplemental Clothing Allowance

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0623SupplementalClothingAllowance.doc>

Based on the enactment of Welf. & Inst. Code § 1146(f)(4), foster children are now entitled to receive a supplemental clothing allowance of \$100 per year. The FYI emphasizes that this money is meant to supplement, not replace, the “regular initial/replacement or back-to-school clothing allowances.” This supplement will go to foster family homes, relative caregivers, non-relative extended family members, and foster family agencies. It will not be provided to group homes or Kin-GAP guardians. The automatic allowance is scheduled to take place on April 26, 2006. (DE)