



# Children's Law Center of Los Angeles

## “DEPENDENCY LEGAL NEWS”

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### NEW DEPENDENCY CASE LAW

#### **ICWA – PARENT’S FLIMSY CLAIM OF TRIBAL MEMBERSHIP AFTER PROPER NOTICE TO BIA DID NOT REQUIRE NEW ICWA NOTICE**

*In re Joseph P.* – filed Jun. 30, 2006, Fifth Dist.

Docket No. F049193

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F049193.DOC>

Early in the dependency proceedings, the father said he believed he had American Indian heritage but did not know what tribe. The Department sent notice to the BIA as required in cases in which the tribe is unknown, and the BIA responded that the children were not ICWA-eligible. The juvenile court found that ICWA did not apply. Months later, at the Welf. & Inst. Code § 366.26 hearing, the father said that he was a registered member of the Mohican tribe. The juvenile court found no justification to change its prior finding that ICWA did not apply and terminated parental rights. Affirmed. The court of appeal rejected the father’s argument that his belated claim of Mohican heritage created a new “reason to believe” that the children might be Indian, requiring new ICWA notice. The Department had complied with ICWA by noticing the BIA and no tribe, including the Mohican tribe, had come forward stating the children were ICWA-eligible. Since there was no ICWA notice violation, there was no basis to invalidate the dependency proceedings under 25 U.S.C. § 1914. The appellate court suggested that a parent could seek to undo a finding that ICWA did not apply if new information became available by filing a § 388 petition. However, simply naming a tribe would not constitute changed circumstances; the parent would need to explain the basis for his or her claim. (CS)

#### **PATERNITY**

*In re Baby Boy V.* -- filed Jun. 26, 2006, Second Dist., Div. One

Docket No. B187823

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B187823.DOC>

Baby Boy V. tested positive for drugs at birth, and was detained. His mother refused to give any information about the identity of his father. An alleged father learned of his existence eight months after his birth, contacted the mother’s social worker, and asked for reunification services and visitation. The social worker denied this request, and told the alleged father to appear at the Welf. & Inst. Code §

366.26 hearing a month later. He did so, but the juvenile court denied his request for a paternity test. The court continued the § 366.26 hearing to a later date to ensure proper notice. The alleged father appeared again at the second § 366.26 hearing date, and the juvenile court terminated the parental rights of the mother and “anyone else claiming to be the parents of this child.” Reversed.

The court of appeal rejected the Department’s position that the alleged father had no standing to appeal. Although the general rule is that an alleged father has no standing to appeal an order terminating parental rights, here the alleged father appeared at the earliest practical point and attempted to join the proceedings as a party, and any other result would be absurd. On the merits, the court of appeal held that under *Kelsey S.*, when an unwed father learns of a child’s existence and “promptly comes forward ...due process prohibits the termination of his parental relationship absent a showing of unfitness...” The case was remanded to a different judge for a hearing on whether the alleged father came forward promptly and otherwise satisfied the requirements of *Kelsey S.* If so, the juvenile court must order a paternity test under Cal. Rules of Court, rule 1413(h), and, if the test confirms biological paternity, investigate the father’s fitness and provide him with reunification services and visitation unless he is unfit, and reconsider the permanent plan for Baby Boy V. (MM)

#### **TERMINATION OF JURISDICTION WITH PREVIOUSLY NON-CUSTODIAL PARENT -- WELF. & INST. CODE § 361.2**

*In re Janee W.* – filed May 31, 2006, Second Dist., Div. Eight  
Docket No. B182530

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B182530.DOC>

Mother appealed the court’s order terminating jurisdiction over the case and awarding legal and physical custody of the children to their father. The children were detained from mother and father was not a member of the household but wanted custody. The appellate court found the juvenile court erred in considering the issue of reunification services under Welf. & Inst. Code § 364 rather than proceeding under § 361.2, which permits the court to grant custody to a previously non-custodial parent with or without continued supervision. The appellate court stated that when deciding whether to terminate jurisdiction, the trial court must determine whether there is a need for continued supervision, not whether conditions that justified taking jurisdiction in the first place still exist. However, the appellate court found the juvenile court’s application of § 364 harmless because substantial evidence supported the finding that continued supervision was not necessary. Lastly, the appellate court found mother’s claim of lack of reasonable services irrelevant because the children were with their father. (JC)

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

#### **NON-EXEMPTIBLE CONVICTIONS; HEALTH & SAF. CODE § 1522, CONSTITUTIONALITY OF**

*Jane Doe & Mary Glesmann v. Rita Saenz* – filed Jun. 22, 2006, First Dist., Div. Three  
Docket No. A105364

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A105364.DOC>

Appellants challenged constitutionality of the non-exemptible conviction provisions of the Health & Saf. Code, which prevent people convicted of certain crimes from working at child care facilities, becoming foster parents or relative caregivers, etc.

Health & Saf. Code §§ 1502 and 1522 permit the state DSS and county child welfare agencies to grant exemptions for people convicted of some crimes to work in child care facilities, obtain foster care licenses, etc. Certain crimes, however, are “non-exemptible” under Health & Saf. Code § 1522(g)(1); these include “crime[s] against an individual” listed in Pen. Code § 667.5(c). Health & Saf. Code § 1522(g)(1)(A)(ii) further provides that even some of these ‘non-exemptible’ offenses can be waived, if the conviction occurred more than 10 years ago and the person obtains a certification of rehabilitation. Others – including rape and violence crimes against children – can never be waived.

At the time Health & Saf. Code § 1522(g)(1) was enacted, Pen. Code § 667.5(c) included a list of 19 ‘violent felonies.’ But § 667.5(c) was amended in 2000 to add more offenses to the list, including second-degree robbery and burglary of an occupied home. As a result, second-degree robbery and ‘occupied burglary’ became non-exemptible crimes.

The court of appeal held that: (1) The non-exemptible conviction provision, Health & Saf. Code § 1522(g)(1), includes only those crimes listed in Pen. Code § 667.5(c) that are “crimes against an individual.” Burglary is a property crime. So, even though occupied burglary was added to Pen. Code § 667.5(c), it is not a non-exemptible crime.

(2) Treating second-degree robbery as non-exemptible violates the constitutional right to equal protection, because more serious offenses (murder, manslaughter, robbery using a firearm, etc.) *are* exemptible under Health & Saf. Code § 1522(g)(1)(A)(ii), if the offense occurred more than 10 years ago and the person obtains a certificate of rehabilitation.

(3) DSS’s methods of notifying people that they have a non-exemptible conviction violate due process. DSS must inform people of the standards used in making this determination, the documents on which DSS relied, the charge, the date, and the court in which the conviction(s) occurred. (MM)

### **UNPUBLISHED CASES OF INTEREST**

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

#### ***Reasonable Services***

***In re Valerii D.*** – filed Jun. 9, 2006, Second Dist., Div. Five  
Docket No. B186786

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B186786.DOC>

The child was detained from her father and placed in North Hollywood. Reunification services were ordered for the mother, who lived in Mojave. The mother lacked stable housing, a car, or much money. The juvenile court repeatedly ordered DCFS to assist mother with transportation to visits and with low cost referrals. DCFS said it tried but was unable because the mother lived out of county. The mother dropped out of several programs she had found herself, tested positive for drugs, and failed to visit. The juvenile court found that DCFS had provided reasonable services and terminated reunification. Reversed. No substantial evidence supported the reasonable services finding. The fact that the mother lived out of county, was difficult to contact, and tested positive for drugs did not excuse the Department from providing reasonable services. One justice dissented. (CS)

#### ***Reunification Services – Termination; Welf. & Inst. Code § 366.22***

***Diane M. v. Superior Court*** – filed Jun. 26, 2006, Second Dist., Div. One  
Docket No. B189771

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B189771.DOC>

Mother substantially complied with the case plan but the court terminated her reunification services and set a Welf. & Inst. Code § 366.26 hearing. Mother filed a writ petition challenging the sufficiency of the evidence of risk of detriment to the child. Writ denied. A parent's compliance with the reunification plan is only one factor in deciding whether the child should be returned home at a § 366.22 hearing. "A parent's completion of court-ordered programs does not guarantee a return of the child." (MM)

### **OTHER LEGAL DEVELOPMENTS**

#### **New Dependency-Related California Rules of Court as of July 1, 2006 –**

**Rule 1463.1** – sets forth procedure for requesting prospective adoptive parent designation under Welf. & Inst. Code § 366.26(n)

**Rule 1463.3** – addresses notice required before removing a child from a designated prospective adoptive parent and objecting to a proposed removal under Welf. & Inst. Code § 366.26(n)

**Rule 1463.5** – addresses notice of and objections to emergency removal from a prospective adoptive parent under Welf. & Inst. Code § 366.26(n)

Link to rules: <http://www.courtinfo.ca.gov/rules/amendments/july2006.pdf>

#### **New or Revised Dependency-Related Judicial Council Forms as of July 1, 2006 –**

**JV-185** – *Child's Information Sheet—Request to Change Court Order*

**JV-200** – *Custody Order—Juvenile—Final Judgment*

**JV-205** – *Visitation Order—Juvenile*

**JV-245** – *Application and Affidavit for Restraining Order--Juvenile*

**JV-250** – *Restraining Order—Juvenile*

**JV-321** – *Request for Prospective Adoptive Parent Designation, Notice, and Order*

**JV-322** – *Confidential Information—Prospective Adoptive Parent*

**JV-323** – *Notice of Intent to Remove Child and Proof of Notice, Objection to Removal, and Order After Hearing*

**JV-324** – *Notice of Emergency Removal, Objection to Removal, and Order After Hearing*

**JV-325** – *Proof of Notice of Hearing*

**JV-325-INFO** – *Instructions for Notice of Prospective Adoptive Parent Hearing*

**JV-330** – *Letters of Guardianship (Juvenile)*

**JV-330 S** – *Cartas De Tutela (Menores)*

**JV-450** – *Order For Prisoner's Appearance At Hearing Affecting Prisoner's Parental Rights*

Link to forms: <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>

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

**Procedural Guides:**

0050-501.40 (REV.) Child Abuse And Neglect Reporting Act (CANRA): Immunities And Liabilities

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050140V0606.doc>

This procedural guide has been revised to reflect changes in the Child Abuse and Neglect Reporting Act (CANRA). (JC)

0050-503.55 Referrals Regarding Children of Military Personnel

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050355MilitaryV0606.doc>

This revised procedural guide has been revised to reflect changes in the operational agreement with the Family Advocacy Office at the Los Angeles Air Force Base. (JC)

0100-510.55 (REV.) Religious Practices in Out-Of-Home Care

Link to procedure:  
<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010051055ReligiousPractice.doc>

This procedural guide has been revised to reflect the cancellation of the DCFS 708 and other non-substantive changes. (JC)

300-503.20 (REV.) Writing the WIC 366.26 Hearing Report

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050320wic26V0606.doc>

This procedural guide has been revised to reflect the change impacted by the Concurrent Planning Redesign protocols and the court's Permanency Plan to reduce the number of long term foster care recommendations. (JC)

1200-500.10 (REV.) Vital Records (Birth, Death, Marriage and Divorce)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/1200/120050010VitalRecords.doc>

This procedural guide has been revised to reflect the release of FYI 03-49, which states that CSWs are to use the DCFS 230 when requesting vital records. (JC)

**For Your Information (FYIs):**

06-34 Updated Guidelines On Communicating With The Juvenile Court On The Orthodontia Needs of DCFS-Served Children

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0634OrtodontiaUpdate.doc>

This FYI informs CSWs of the new guidelines on accessing orthodontia services for children served by DCFS. (JC)

06-35 SDM Risk Assessment Completion on Unfounded Referrals to Support First Five Implementation of Partnership for Families Initiative

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0635SDMRiskAssessmentFirstFive.doc>

This FYI informs CSWs on how to provide referrals to First Five Partnership for Families. (JC)