



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

CHILD SAFETY AND VISITATION; WIC 300(d) and 362.1, subd. (a)(1)(B)

In re Ethan G. – filed December 6, 2006, Second Dist., Div. Seven

Docket No. B193907

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B193907.DOC>

Petitioner DCFS sought a writ of mandate after the juvenile court ordered an offending adoptive father to return to the family home on the condition that his contact with his child Ethan be monitored at all times by the non-offending father. The juvenile court previously found Ethan was a child described by [Welf. & Inst. Code, § 300](#), subds. (b) and (d). The juvenile court made its order after a contested hearing in which the CSAP counselor testified that the offending father became reluctant to participate in the program and that there was a possibility of re-abuse. The CSAP counselor also opposed the return of the offending father to the family home because the non-offending father had not attended CSAP sessions as recommended. Reversed and remanded. The appellate court found the trial court's order violated its obligation to safeguard Ethan pursuant to [Welf. & Inst. Code, § 362.1, subd. \(a\)\(1\)\(B\)](#). The appellate court found that where the trial court determined for the safety of a child sex abuse victim, that contact between the offending father and child must be monitored at all times, the trial court may not then permit the father to return to the family home where the abuse occurred and designate the non-offending parent as the monitor. The appellate court further noted that when the threat to a dependent child is the likely recurrence of sexual abuse, the concept of monitored visitation is fundamentally incompatible with around-the-clock in-home contact. (JC)

DUE PROCESS; WIC § 366.26 HEARINGS

In re Thomas R. – filed Dec. 7, 2006

Docket No. A112433

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A112433.DOC>

Parents appealed termination of parental rights to two boys, ages 8 and 13. The boys had been placed for over two years with foster parents who had not wanted to adopt. However, the county agency filed an addendum report shortly before the § 366.26 hearing stating that the foster parents had changed their minds and now wanted to adopt, and a home study was in progress. This was the sole basis for the agency's contention that the boys were adoptable. Parents' counsel sought to cross-examine the social worker and the foster parents at the § 366.26 hearing. The juvenile court required an offer of proof. Counsel stated that he wished to determine why the foster parents changed their minds, and their current level of commitment to the children. The court found the offer of proof inadequate, denied the parents' request for a contested hearing, and terminated parental rights. Parents appealed.

Reversed. Parents have a due process right to cross-examine witnesses at a § 366.26 hearing as to relevant issues on which the county agency has the burden of proof – such as adoptability. The court of appeal distinguished *In re Earl L.* (2004) 121 Cal.App.4th 1050 and *In re Tamika T.* (2002) 97 Cal.App.4th 1114, which held that the court may require an offer of proof before granting parents a contested § 366.26 hearing on an issue on which the *parent* has the burden of proof – such as the § 366.26(c)(1)(A) and (c)(1)(E) exceptions. “Precluding the parents from exploring and testing the sufficiency of the Department's evidence is fundamentally different than requiring them to describe evidence they will offer to prove a point.” The error was not harmless beyond a reasonable doubt, so a new § 366.26 hearing must be held. (MM)

REVIEW HEARINGS; WIC § 366.21(e)

Tonya M. v. Superior Court – filed Nov. 28, 2006
Docket No. B193167

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B193167.DOC>

Baby was detained at birth due to drug exposure. Mother was whereabouts unknown for first six months, then was incarcerated, and began visitation and drug treatment and counseling. Welf. & Inst. Code 366.21(e) hearing was delayed due to notice problems, and was actually held eight months after petition was filed. At this hearing, the court terminated family reunification services. Mother filed writ petition.

Writ denied. The court of appeals held that: (1) the county agency's efforts were reasonable under the circumstances, in that mother did not contact the agency until six months had passed; (2) the juvenile court's findings that mother had made only minimal progress and there was no substantial likelihood that the child could be returned by the 12-month hearing were supported by the evidence; and (3) the juvenile court did not err in using the time remaining until the 12-month hearing (4 months) in making this determination, rather than a full 6-months after the 6-month hearing. As a practical matter, 6-month hearings are often delayed, and petitioner's interpretation of § 366.21(e) and (f) is contrary to the legislative intent to give parents of young, highly adoptable children a strict time limit to minimize the time that children spend in foster care. (Disagreeing with *Dawnell D. v. Superior Court* (1999), 74 Cal.App.4th 393).(MM)

UNPUBLISHED CASES OF INTEREST

WIC § 388 – RIGHT TO HEARING

In re Kayla G. – filed November 29, 2006.

Docket No. B190837

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B190837.DOC>

Three children were detained in 1988 and placed with maternal grandmother; case was closed in 2003 with legal guardianship. Grandmother died in 2006, and DCFS petitioned to reopen the case. Children were redetained and placed with an uncle. Mother filed a § 388 petition seeking return of the children or family reunification services, with a declaration stating that she had completed counseling and parenting programs, was employed, had housing, and had been the children’s primary caregiver during the grandmother’s illness. Juvenile court denied the § 388 without a hearing. Reversed. It was an abuse of discretion to deny mother’s § 388 petition without an evidentiary hearing, because mother had made a prima facie case of changed circumstances and best interest, and two of the children wanted to return to mother. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0080-505.10 (REV.) Youth Development: Transitional Independent Living Planning

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050510TILPv1106.doc>

This revised procedural guide informs CSWs of the purpose and goal of transitional independent living planning for foster care youth. (JC)

0600-518.31 (REV) Drug-Endangered Children (DEC) Program

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0600/060051831DECv1206.doc>

This revised procedural guide informs CSWs of the Drug Endangered Children (DEC) program that has been developed to coordinate the efforts of law enforcement, medical services, prosecution and child welfare agencies to ensure that the children exposed to the manufacture and distribution of methamphetamine and other drugs such as PCP and ecstasy receive appropriate attention and care. (JC)