



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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Written by: Martha Matthews (MM), Cameryn Schmidt (CS), Jenny Cheung (JC)

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NEW DEPENDENCY CASE LAW

ICWA

In re E.H. – filed Jul. 6, 2006, Fourth Dist., Div. Two

Docket No. E039350

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E039350.DOC>

Mother appealed a Welf. & Inst. Code § 366.26 order of legal guardianship on the sole basis that insufficient evidence supported the juvenile court's finding that ICWA did not apply. Affirmed. The social worker said in the detention report that ICWA might apply, but all subsequent reports said ICWA did not apply. This definite statement in the subsequent reports supported an inference that the social worker had made the required ICWA inquiry and obtained information to support that ICWA was not applicable. The mother submitted on all of the reports without objection, which further supported the inference. Also, the juvenile court asked the parents at several hearings to disclose if they were members of any Indian tribe, which satisfied the court's initial and continuing duty under Cal. Rules of Court, rule 1439(d) to inquire whether a child is or may be an Indian child. (CS)

TERMINATION OF PARENTAL RIGHTS; DUE PROCESS

In re Gladys L. – filed Jul. 25, 2006, Second Dist., Div. Eight

Docket No. B186442 c/w B188355

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B186442.DOC>

Child became dependent while in mother's custody. Father was non-offending. He appeared at the detention hearing and was found to be presumed father, but then disappeared for three years. He reappeared at the Welf. & Inst. Code § 366.26 hearing and requested visits. Although DCFS had never alleged that the presumed father was unfit, the juvenile court denied the request and terminated his parental rights. Reversed. Due process prohibits the termination of a presumed father's parental rights without a finding of unfitness by clear and convincing evidence. (MM)

NON-DEPENDENCY CASES OF INTEREST

PATERNITY

Gabriel P. v. Suedi D. – filed Jul. 25, 2006, Second Dist., Div. Four

Docket No. B181184

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B181184.DOC>

Mother was involved with two men, Gabriel and Anthony, and became pregnant. Anthony signed a voluntary declaration of paternity when the child was born. After the birth, mother refused to let Gabriel visit the child. Gabriel filed a paternity action and requested blood testing. The trial court ordered testing and set aside Anthony's voluntary declaration of paternity because the tests showed that Gabriel was the biological father. The trial court held that although Gabriel did not meet the statutory requirements for "presumed father," he was a *Kelsey S.* father. Mother appealed. Affirmed in part and reversed in part.

First, the trial court was correct in ruling that Gabriel had standing to file the paternity action, because he acted promptly to try to establish paternity and the mother's conduct prevented him from qualifying as a presumed father. Second, the trial court properly ordered blood tests, because Gabriel was entitled to an opportunity to prove that he was the presumed father. If the blood tests showed that Gabriel, not Anthony, was the biological father, then Anthony's voluntary declaration of paternity could be set aside under Fam. Code § 7555(b)(1).

However, the trial court erred in not assessing Anthony's relationship with the child. Although Anthony was not a party to the paternity action, the mother had standing to claim that Anthony was the presumed father. The trial court should not have set aside Anthony's voluntary relinquishment and rejected his competing claim to paternity, without joining him as a party and deciding which man's claim to presumed fatherhood was "founded on the weightier considerations of policy and logic," under § 7612(b). Remanded for new paternity hearing. (MM)

UNPUBLISHED CASES OF INTEREST

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

Termination of Jurisdiction Over Child in Guardianship

In re Angel E. – filed Jul. 18, 2006, Second Dist., Div. Seven

Docket No. B186341

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B186341.DOC>

Child, 12, in non-relative guardianship, appealed order terminating jurisdiction on ground that it was not in his best interest because it would deny him access to ILP services available to dependents once they reach 16. Affirmed. The juvenile court did not abuse its discretion in terminating jurisdiction over the child's objection (the guardian favored termination), since the child's guardian could file a Welf. & Inst. Code § 388 petition to reinstate jurisdiction before the child's 16th birthday. (CS)

Visitation

In re Ryan A. – filed Jul. 26, 2006, Second Dist., Div. One

Docket No. B187215

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B187215.DOC>

Juvenile court ruled that mother could only have visits with her 17 year old son if he consented. The son had been a dependent for many years, mainly due to emotional abuse by mother. Mother appealed,

contending that the juvenile court improperly delegated authority to the child regarding visitation. Affirmed. Juvenile court did not err in making a visitation order that took the child's emotional well-being into account, and required his consent as a way to ensure that the visitation was in his best interest. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0070-520.10 (REV.) The Voluntary Surrender of Newborn Infants

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007052010SafeSurrender0806.doc>

This procedural guide is revised to reflect changes in the law including a “Good Samaritan” provision and clarification of confidentiality, fully informing the surrendering adult and the legal requirement for the filing of a VS 136, Certificate of Finding of Unknown Child. Explanation is also provided regarding the differences between abandonment, Safe Surrender and legal relinquishment. Finally, revisions were made to reflect a change in DCFS practice to assign all Safe Surrender Referrals and Cases to the Sensitive Case Unit. (JC)

0080-503.00 (REV.) Notification to the Child Support Services Department (CSSD)

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050300ChildSupportV0806.doc>

This revised procedural guide instructs CSWs to notify the court at the Jurisdictional/Disposition hearing and at the WIC 366.21(e) hearing whether or not a referral was made to CSSD. (JC)

0080-504.15 (REV.) Integration Of California Work Opportunity and Responsibility to Kids (CALWORKS) Service Plans Into Case Plan Updates

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050415V0806.doc>

This procedural guide has been revised to include procedure for a pilot program in the North Hollywood and Metro North where DPSS Greater Avenue for Independence (GAIN) service workers have been out stationed in these regional offices to increase services to clients. (JC)

0080-507.15 (REV.) Concurrent Planning: Criteria for the Concurrent Plan Assessment (CPA)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050715v0806.doc>

This revised procedural guide informs CSWs of updated permanency language regarding concurrent planning for clients. (JC)

0080-507.20 (REV.) Concurrent Planning: Completing the Permanency Planning/Adoption Assessment and Activating the Permanence Track

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050720V0806.doc>

This revised procedural guide includes instructions to address procedures for initiating the Concurrent Planning: Permanency Planning/Adoption Assessment for staff in the Concurrent Planning Redesign Offices. (JC)

0800-508.05 (REV.) Fast Track to Permanency (FTP) Provisions

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050805V0806.doc>

This revised procedural guide informs CSWs of procedures to follow when a case is identified as Fast Track to Permanency. (JC)

0100-570.10 (REV.) The Care of Children Placed In Group Homes

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010057010V0806.doc>

This revised procedural guide informs CSWs of several non-substantive changes made to reflect changes in the group home contract. (JC)

0300-306.30 (REV.) Notice by Publication of Citation

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030630V0806.doc>

This revised procedural guide instructs CSWs that when a parent's identity is unknown, the court has authority to waive publication of citation, upon the submission of a legally sufficient due diligence. (JC)

0300-503.10(REV.) Writing the Jurisdictional/Dispositional Hearing Report

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050310v0806.doc>

This revised procedural guide informs CSWs of procedures to follow before writing the Jurisdictional/Dispositional report. (JC)

0300-503.15(REV.) Writing the Status Review Hearing Report

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050315V0806.doc>

This revised procedural guide informs CSWs of procedures to follow before writing the status review hearing report. (JC)

0300-503.16(REV.) Writing the 366.3 Status Review Hearing Report

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050316V0806.doc>

This revised procedural guide informs CSWs of procedures to follow before writing the WIC 366.3 status review hearing report. (JC)