



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

WIC § 361.2; NONCUSTODIAL PARENTS; ICPC

In re John M. – filed August 16, 2006, Fourth Dist., Div. One

Docket No. D047888

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D047888.DOC>

John, age thirteen, and his ten-month-old half-sibling were detained from mother and placed with a relative. John's father, who lived in Tennessee, requested placement. At disposition, juvenile court denied father's request because: father was an "unknown entity" since he lived out of state; John had said he did not want to live "in the country" with father; John had limited contact with father in the past; and out of state placement would impede mother's reunification plan, interfere with John's sibling and extended family relationships, and impede John's access to needed services. The juvenile court also denied father's counsel's request for a continuance to obtain an ICPC report regarding father. (The agency had not pursued an ICPC report after John said he did not want to live with father.)

Reversed. Under Welf. & Inst. Code § 361.2, the court must place a child with a nonoffending, noncustodial parent unless the court finds by clear and convincing evidence that the placement would be detrimental to the child's safety or well-being. The facts of this case do not support such a finding. Even though John was an older child, he was not entitled to decide where he should be placed, and the agency should not have deprived the court of information needed to make a placement decision (the ICPC report).

The juvenile court also erred by denying the continuance. The court should have continued the hearing, leaving John in his current placement for the time necessary to gather information about father through an ICPC report or alternative means. Even if this took longer than the 60-day time limit, it would qualify as exceptional circumstances justifying a delay under WIC § 352(b).

The court of appeal also held that ICPC compliance is not required for an out-of-state placement with a parent. The DSS regulations and Rule of Court 1428 which impose this requirement are invalid

because they conflict with the statute, Fam. Code § 7901, art. 3 (a) & (b). However, the juvenile court *may* use an ICPC report as a means of gathering information about an out of state parent. (MM)

WIC § 388 PETITIONS; APPEALABLE ORDERS

In re Daniel C. – filed August 10, 2006, Fourth Dist., Div. One

Docket No. D047409

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D047409.DOC>

Four siblings were placed with maternal grandparents, and they were eventually granted de facto parent status. The agency removed the children from the grandparents because their house was dirty and unsafe, and because the grandparents had used corporal punishment. The grandparents later filed a Welf. & Inst. Code § 388 petition, stating that their home was now clean and safe, and the agency had not found an adoptive placement for the four children. Grandparents appealed the denial of their § 388 petition. Affirmed. First, the grandparents did not waive their right to appeal by not filing a writ petition under WIC § 366.28, because § 366.28 only applies to specific placement orders. On the merits, however, the juvenile court did not abuse its discretion in denying the § 388. (MM)

NOTICE OF APPEAL

In re Madison W. – filed August 10, 2006, Fifth Dist.

Docket No. F049851

Link to case: <<http://www.courtinfo.ca.gov/opinions/documents/F049851.DOC>>

Mother's trial counsel filed a notice of appeal on February 23, 2006, appealing from the January 13, 2006 order terminating parental rights. The notice of appeal contained no reference to the January 10 order denying the section 388 petition. Mother's court-appointed appellate counsel filed an opening brief challenging the denial of mother's section 388 petition and the agency disputed the appellate court's jurisdiction to resolve the issue given the terms of mother's notice of appeal. While the appellate court does not "condone" the failure to cite all appealable orders, it recognizes the potential for claims of ineffective assistance of counsel and the unnecessary consumption of judicial resources. Thus, the appellate court liberally construed a parent's notice of appeal from an order terminating parental rights to encompass the denial of the parent's section 388 petition, provided the trial court issued its denial during the 60-day period prior to the filing of the parent's notice of appeal. (JC)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

For Your Information (FYIs):

06-39 Educational Case Planning

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0639EducationCasePlanning.doc>

This FYI informs CSWs of the Education Coordinating Council's development of the "Blueprint for Raising the Educational Achievement of Foster and Probation Youth" with the goal of foster and probation youth being as successful academically as non-dependent youth. (JC)

06-40 Electronic Case Transfer: Special Assignments

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0640ElectronictransferSpecialAssignment.doc>

This FYI informs CSWs of procedures to follow when transferring the electronic portion of a case requiring Special Assignment for Family Preservation or Intensive Services. (JC)

06-41 Procedures for Placing Children Age 3 and Younger (Revised)

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0641PlacingChildren3YoungerRev.doc>

This revised FYI informs CSWs of new instructions to actively pursue placing children with relatives and/or with siblings who are already placed in out-of-home care, regardless as to whether the sibling has been adopted or the sibling does not currently have an existing relationship. (JC)