



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

FAMILY REUNIFICATION SERVICES – DENIAL; WIC 361.5(b)(10)

In re Albert T. – filed October 26, 2006, Second Dist., Div. Seven

Docket No. B189559

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B189559.DOC>

The juvenile court denied family reunification services to the mother under Welf. & Inst Code § 361.5(b)(10). Mother did not dispute that the first prong of § 361.5(b)(10) applied: the court terminated reunification services for Albert's older sibling, Alan, after she failed to reunify with him. Mother appealed the second prong arguing the evidence at the disposition hearing for Albert was insufficient to support the trial court's implied finding she had not subsequently made a reasonable effort to treat the problems that led to Alan's removal. Alan was removed from mother's care due to her inability to provide ongoing care and supervision for him due to his mental and emotional problems. And while not a problem that led to Alan's removal, mother's history of relationships involving domestic violence was a concern at the time of Alan's removal. During mother's reunification period with Alan and VFM and VFR with Albert, mother completed several court-ordered programs specifically directed to domestic violence issues. Mother, however, was still involved with men who had histories of domestic violence and failed to reunify with Alan due to her inability to grasp the skills needed to care for Alan. Reversed and remanded. The appellate court found the trial court erred in denying mother reunification services based on an implied finding that because she failed to avoid relationships with violent men, she had not made a reasonable effort to treat the problems that led to Alan's removal. The appellate court further noted that the requirements of § 361.5(b)(10) are directed to the parent's reasonable efforts to treat the problem, not the success or failure of those efforts. The appellate court concluded that mother made reasonable efforts to treat the domestic violence problems by participating and completing court-ordered programs addressing the issue. (JC)

ICWA

In re Rebecca R. – filed October 17, 2006, Fourth Dist., Div. One

Docket No. E039601

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E039601.DOC>

Father appealed from termination of parental rights, claiming that the juvenile court failed to ensure that the county agency asked him whether he had Indian ancestry. Affirmed. The court of appeals rejected father's argument based on noncompliance with Rule of Court 1439(d), which requires that parents be ordered to complete form JV-130 (Parental Notification of Indian Status) at their first court appearance. Rule 1439(d) was not in effect until January 1, 2005, a year after father's first appearance in this case. In this case, the court did order the agency to ask the parents about Indian ancestry, and the social worker's reports stated that ICWA did not apply. The court had no reason to think that the agency failed to carry out its duty of inquiry. Moreover, even on appeal father makes no claim that he does have Indian heritage, so there is no showing of prejudice. Father's appeal "amounts to nothing more than trifling with the courts ... ICWA is not a 'get out of jail free' card dealt to parents of non-Indian children, allowing them to avoid a termination order..." (MM)

MODIFICATION OF PRIOR ORDERS: WIC §§ 385, 388

Nickolas F. v. Superior Court – filed October 25, 2006, Fourth Dist., Div. One

Docket No. D048652

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D048652.DOC>

Nickolas's two sons were detained at ages 1 ½ and 3 because their half-brother tested positive for drugs at birth. At the time of detention, Nickolas was incarcerated in Arizona on felony child abuse charges involving another half-sibling. The court ordered family reunification services for both parents. At the 12-month hearing, Nickolas's counsel pointed out that no FR services had been provided to him. The court continued the hearing to allow the county agency to file a § 388 petition on the basis of "new evidence" concerning the seriousness of the prior child abuse case. (The agency could have, but did not, present this information at the jurisdiction and disposition hearing.) At the continued 12-month hearing, the court admitted evidence concerning the facts of the prior child abuse case, and modified the dispositional order to deny Nickolas reunification services under Welf. & Inst. Code § 361.5(e)(1).

Nickolas filed a writ petition. The court of appeals agreed with Nickolas that a § 388 petition by the agency was not the correct procedure. Instead, the juvenile court should have exercised its authority under § 385 to modify the dispositional order *sua sponte*¹ as soon as the court realized that it had erred in granting reunification services without determining whether § 361.5(c) or (e)(1) applied. Both under § 385 and under the Constitution, the juvenile court has inherent power to modify a prior order when the court recognizes that the order was erroneously, inadvertently, or improvidently granted; a party need not file a § 388 petition to allow the court to do this.

The modification did not violate Nickolas's due process rights, even though the court used the wrong procedure, because Nickolas had notice and an opportunity to be heard, to present evidence and to confront witnesses. Writ denied. (MM)

TERMINATION OF PARENTAL RIGHTS; SIBLING RELATIONSHIP EXCEPTION; WIC 366.26(c)(1)(E)

¹ For those of us who don't sleep with a legal dictionary under our pillows, this means "on the court's own motion."

In re Daisy D. – filed October 27, 2006, Third Dist.

Docket No. C052499

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C052499.DOC>

Mother appealed termination of parental rights arguing the juvenile court erred by failing to find a statutory exception to adoption based on interference with sibling relationships. Daisy was initially placed in a foster home with her half-siblings but a month later was moved to her paternal grandparent's home. Her half-siblings were placed with their maternal uncle and Daisy visited with them about once a month for an all-day visit. The paternal grandparents indicated their intention to continue facilitating sibling visits following the adoption. The mother failed to raise the sibling relationship exception with the trial court. Affirmed. Contrary to mother's argument that the trial court had a duty to determine *sua sponte* whether the sibling relationship exception to adoption applied, the appellate court disagreed and found that mother's failure to raise the exception at the section 366.26 hearing constituted a forfeiture of the issue on appeal. The appellate court also found that even if the exception was raised with the trial court, the sibling relationship exception would not apply because Daisy would be adopted by her grandparents who intended to maintain sibling contact and there was no evidence Daisy would suffer significant detriment if visits with her half-siblings ceased. (JC)

TERMINATION OF PARENTAL RIGHTS; WIC § 366.26(c)(1)(B) EXCEPTION

In re Christopher L. – filed October 16, 2006, Fourth Dist., Div. One

Docket No. D048353

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D048353.DOC>

Christopher was detained at age 14 due to drug use by mother and placed with relatives. At the § 366.26 hearing, he testified that he wanted to be adopted by his relatives, but also testified that he wanted to continue to visit with his mother. The juvenile court found that his testimony showed some internal conflict, but overall Christopher was in favor of adoption. The court terminated parental rights and rejected mother's claim that the Welf. & Inst. Code § 366.26(c)(1)(B) exception applied. Mother appealed. The court of appeals affirmed, holding that the juvenile court did not err in resolving any inconsistency in Christopher's testimony by finding that Christopher favored adoption, and that the § 366.26 (c)(1)(B) exception applies only when the minor unequivocally objects to termination of parental rights. (MM).

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0080-505.20 (REV.) Health and Education Passport (HEP)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050520HEPV1006.doc>

Welfare and Institutions Code Section 16010 mandates that the Case Plan for every child in foster care include a summary of the child's health and education information and that a copy of the summary be attached to all court reports. This revised procedural guide advises CSWs to utilize the CWS/CMS

Health and Education Passport (HEP) document for this purpose. In addition, the HEP shall be updated and revised each time new health and/or education data are entered into CWS/CMS. (JC)

0100-535.12 (REV) Early Start to Emancipation Preparation (ESTEP)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010053512ESTEPv1006.doc>

This revised procedural guide informs CSWs of the ESTEP program and what its services include. (JC)

0100-535.30 (REV.) Independent Living Program (ILP)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010053530ILPV1006.doc>

This revised procedural guide informs CSWs of the ILP program, Core ILP services, and ILP eligibility. (JC)

0300-306.75 (REV) Due Diligence

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030675V1006.doc>

This revised procedural guide explains who is responsible for initiating the search, new procedures Dependency Investigation Assistant (DIA), and new search timeline. (JC)

0300-503.12 (REV) Health and Education Questionnaire

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050312HEQuestionnaireV1006.doc>

This revised procedural guide informs CSWs of the Juvenile Court CSW's responsibilities and the dependency investigator or case carrying CSW's responsibilities in obtaining complete health and education information pertaining to the child. (JC)

0300-503.40 (REV) Writing the Probate Legal Guardianship Court Report

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050340ProbateLGV1006t.doc>

This revised procedural guide informs supervising CSWs and dependency investigators of their responsibilities upon receipt of a referral on a petition from Probate Court. (JC)

0300-503.90 Submission of Last Minute Information for the Court

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050390.doc>

This procedural guide informs CSWs of procedures to follow when submitting last minute information to the Court. (JC)

0600-501.10 (REV) Medical Consent

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0600/060050110MedConsentV1006.doc>

The issue of medical consent frequently arises in the course of providing services to children. The question as to who is authorized to provide consent depends on the age and maturity of the child, the child's legal status, the nature of the medical treatment sought and/or the availability of the parent(s). This revised procedural guide informs CSWs of the parties who are permitted to consent for medical treatment for the child and the circumstances in which they may do so. (JC)

0900-517.10 (REV) Reimbursement of Non-Recurring Adoption Expenses

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0900/090051710V1006.doc>

This revised procedural guide advises CSWs that reimbursements for non-recurring adoption expenses are available to parents who adopt an AAP-eligible child and informs adoption CSWs of the procedures to follow for reimbursement. (JC)