



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASE LAW**

#### **INCARCERATED PARENTS; WIC 361.2**

*In re V.F.* – filed Dec. 7, 2007, Fourth Dist., Div. One

Docket No. D050824

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D050824.DOC>

Four children were removed from mother. The dependency petition alleged that the parents were incarcerated and unable to care for the children, and that the mother had a long history of child neglect and drug abuse. At the time of the jurisdictional hearing, mother had been released, but father was serving a 13-year sentence. Father wrote a letter to the court saying that he could make arrangements for relatives to care for the children. The juvenile court sustained the petition, removed the children from the parents under WIC 361(c), granted reunification services to mother, and denied reunification services to father under 361.5(e). Father appealed.

Reversed. The dependency laws distinguish between custodial parents, i.e. parents the child was living with at the time the petition is filed, and noncustodial parents. When a noncustodial parent requests custody, the court must place the child with the noncustodial parent unless such placement would be detrimental to the child, under WIC 361.2. WIC 361.2 does not distinguish between ‘offending’ and ‘nonoffending’ parents; it applies regardless of whether the dependency petition makes allegations about the noncustodial parent (although such allegations may be relevant to the detriment finding). An incarcerated noncustodial parent can still request custody, by asking to make

arrangements for the care of the child. So, the juvenile court should have first applied WIC 361.2(a), and made a determination whether it would be detrimental to the children to place them in father's custody, before proceeding to remove the children under WIC 361(c). (MM).

## **JURISDICTIONAL FINDINGS & ICWA**

*In re Veronica G.*- filed November 27, 2007, Fifth Dist., Div. 3  
Docket No. A117131

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A117131.DOC>

DCFS filed a petition against parents alleging physical abuse of their children, Veronica and Samuel. At the jurisdiction hearing, the court ordered DCFS to comply with ICWA and the jurisdiction/disposition report stated that DCFS sent notification by mail to the Federal Bureau of Indian Affairs. The report also stated that Veronica said her mother punished her daily by throwing a shoe at her, grabbing her arm, and hitting her all over her body and Samuel stated that his mother hit and kicked him and his sister every day. In an addendum report, the children confirmed the daily abuse and domestic violence. At a contested jurisdiction hearing, the CSW testified that the children told her about the daily abuse and that their father did not protect them, told her about domestic violence, confirmed that mother burned them with a lighter, and also showed the CSW a small scar on each of their bodies. The CSW testified that Samuel was consistent in his descriptions of the abuse and had not retracted any of the statements. The CSW also testified regarding statements made by a police officer. Also, two sheriffs testified regarding the statements the children made to them and stated that they found the children to be truthful. The juvenile court found there was more than a preponderance of evidence to support each allegation and sustained the petition. Parents appealed, stating that the evidence was insufficient to sustain a jurisdictional finding of risk. They also asserted that the juvenile court failed to comply with ICWA notice requirements; DCFS conceded error but differed as to the remedy.

Affirmed in part but remanded for the limited purpose of ensuring compliance with ICWA. The appellate court recognized that there must be circumstances at the time of the hearing putting the children at risk of harm, and reason to believe that the abuse may continue. But the children's statements and the testimony of the witnesses corroborating the sincerity and credibility of the children's statements constitute ample evidence that the children are at substantial risk of serious physical and emotional harm. In regard to ICWA, the court stated that the error was not jurisdictional in the fundamental sense and reversal is only appropriate when parental rights are terminated. (SA)

### **POST-PERMANENCY HEARINGS; WIC 366.3**

*In re Jacob B.* --filed December 5, 2007, Second Dist., Div. 7  
Docket No. B197375

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B197375.DOC>

Minor was detained on a § 300 petition and placed with maternal grandmother. After twelve months of reunification, court terminated services and set a .26 hearing. At the .26 hearing, the court ordered a permanent plan of legal guardianship and appointed the maternal grandmother as the child's guardian. One year later, appellant/mother filed a § 388 petition seeking to set aside the legal guardianship and requesting additional reunification services and immediate return of minor to her in Colorado, where she was then living. The court granted the petition in part, ordering additional reunification services. Subsequently, the court conducted what it termed a contested WIC 366.22 hearing as to minor, who did not want to move to Colorado. Proceeding under the § 388 standard, the court found that circumstances had changed, but that it was not in minor's best interests to return to appellant. Appellant argued that court should have used the WIC 366.22 standard and returned minor to her, unless it found that there was a substantial risk of detriment in doing so.

Affirmed. Even though the court identified the review hearings following the granting of appellant's § 388 petition as § 366.22 hearings, they were more analogous to hearings under § 366.3, which applies following an order for a permanent plan. Prior to the 18-month hearing, the presumption is that a child should be returned to a parent unless there is a substantial risk of detriment. After the 18-month mark, a positive finding of best interests of child is required. The trial court did not abuse its discretion in finding that it was not in the best interests of minor to terminate the legal guardianship. (PB)

### **TERMINATION OF PARENTAL RIGHTS; WIC § 366.26(c)(1)(D)**

*In re Xavier G. et al* – filed November 27, 2007, Fourth Dist., Div. One  
Docket No. D050977

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D050977.DOC>

Mother appealed termination of parental rights arguing that the § 366.26(c)(1)(D) exception applied because there was insufficient evidence to support the trial court's finding that the maternal grandmother was willing to adopt the children. At the § 366.26 hearing, the social worker testified that mother's visits with the children were sporadic and that the children enjoyed seeing their mother, but they expressed a desire to live with their grandmother. All counsel stipulated that if the grandmother were to testify, she would express her preference for guardianship but was willing to adopt the children. The trial court found that none of the exceptions in § 366.26(c)(1) applied and terminated parental rights. Affirmed. The appellate court found that the record contained substantial evidence that the grandmother was able and willing to adopt the children. The appellate

court also stated that family preference was insufficient to trigger the application of Welf. & Inst. Code § 366.26(c)(1)(D). (JC)

### **OTHER LEGAL DEVELOPMENTS**

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

##### **For Your Information (FYIs):**

107-38            Submission of the DCFS 280 When Temporarily Placing a Child  
                         in the  
                         Home of Relative or Non-Relative Extended Family Member

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0738DCFS280TempPlacement.doc>

This FYI is to remind CSWs that when temporarily placing a child in the home of a relative or non-relative extended family member pending approval of the home, they should submit Form 280 “Technical Assistance Action Request” to ensure the placement is documented in DCFS’ database and the form should indicate it is a non-paid placement. Form 280 should again be submitted along with Form SOC 815 once the home is approved to initiate foster care payments. (SA)

107-39            Updating Tribal Addresses in CWS/CMS for ICWA Notices

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0739UpdatingTribalAddressonCWSCMS.doc>

This FYI is to inform CSWs that if a tribe’s mailing address needs to be updated in DCFS’ database, they should email Diana Orcino, as she is the only person in the State who has authority to make updates to tribal addresses in the system. (SA)

107-40            Reproductive Health And Parenting Resources For Teens In L.A.  
                         County

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0740ReproductiveHealthResources.doc>

This FYI informs CSWs of a new resource list that provides information related to reproductive health and parenting resources for teens in L.A County. The list is available on L.A. Kids and is also attached to the FYI. (SA)