



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

Vol. 3, No. 6 October 9, 2007

Issued by the Children's Law Center of Los Angeles the second and fourth Tuesday of each month

Written by: Martha Matthews (MM), Jenny Cheung (JC), and Sophia Ali (SA)

© 2007 by Children's Law Center of Los Angeles ("CLC"). All rights reserved. No part of this newsletter, except those which constitute public records, may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing from CLC. Cases reported may not be final. Case history should be checked before relying on a case. Cases and other material reported are intended for educational purposes only and should not be considered legal advice.

For more information on Children's Law Center, please visit our website at www.clcla.org.

NEW DEPENDENCY CASE LAW

ICWA

In re Jose C.- filed September 26, 2007, Fifth Dist., Div.

Docket No. F052049

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F052049.DOC>

Mother informed DCFS that she had Indian ancestry in the "Caddo Delaware out of Oklahoma" ["Caddo Nation"] tribe. Upon notice to the tribe and Bureau of Indian Affairs, the Caddo Nation notified DCFS that the children are eligible for enrollment although mother and her parents are not enrolled. The Bureau of Indian Affairs also notified DCFS that the mother and children are not enrolled. At the disposition hearing the juvenile court found that the children are not Indian children defined by ICWA because they are not members of an Indian tribe and are not biological children of a member of a tribe. After the disposition hearing, notice was no longer provided to the Caddo Nation and the court subsequently set a WIC 366.26 hearing and terminated parental rights. Mother appealed, asserting that the juvenile court erred in finding that the children are not Indian children as they are eligible for enrollment, erred in not enrolling the children in the tribe, and erred in not requiring continuing notice to the tribe throughout the proceedings.

Affirmed. Eligibility is only one criterion necessary to be found to be an Indian child. The children's membership or a biological parents' membership is a requirement to be found to be an Indian child. Furthermore, ICWA does not require juvenile courts to enroll children in a tribe; all that is required is to properly notice the tribe of the eligibility of the children to enroll. Finally, the court held that the juvenile court did not err in not requiring continuing ICWA notice to the Cado Nation throughout the proceedings because the court correctly found that the children were not Indian children. (SA)

PATERNITY

County of Orange v. Superior Court (Jason M.), filed Oct. 3, 2007, Fourth Dist., Div. Three

Docket No. G037952

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G037952>

Kameron E. was born in November 2000, and Jason M. and Elicia E. signed a paternity declaration two days after his birth. In April 2002, a default judgment was entered regarding Jason's liability for child support. In August 2002, Jason sought to set aside the default as to the amount he owed, but did not contest paternity. In 2006, Jason sought to set aside the paternity judgment, on the grounds that he and Elicia had not been monogamous, and the child did not look like him. The trial court granted his motion for DNA testing, and the county agency filed a writ petition.

Writ granted. The trial court erred in ordering DNA testing. More than two years had passed since the voluntary declaration of paternity, so under Fam. Code sec. 7646(a)(2) Jason was barred from contesting paternity. The Legislative purpose of the two-year time limit to balance the father's interest in not paying child support for a child who is not his biological child, with the child's interest in finality and in established parent-child relationships. The trial court's power to grant equitable relief is limited to cases of extrinsic fraud – i.e. a fraud which prevents the father from having his day in court. (MM)

INTERNATIONAL CHILD ABDUCTION REMEDIES ACT [ICARA]

In re Marriage of Witherspoon, filed September 27, 2007, Fourth Dist., Div. Three
Docket No. G037889

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G037889>

Danny and Julie W. married in 1994 when they were 52 and 17 years old, respectively. They had two children. In 2002, Julie moved to Germany with the children, where she served in the Army. In 2006, the children were detained by the German child welfare agency, on the basis of neglect due to Julie's alcohol abuse and mental illness. Danny brought the children back to California, where he filed for divorce. Julie sought the return of the children to Germany, and the trial court granted her request on the grounds that the children had been "wrongfully removed" from Germany, under the Hague Convention and the International Child Abduction Remedies Act (ICARA).

Reversed and remanded. Although Julie made a prima facie case of wrongful removal, the trial court should have analyzed whether any of the ICARA exceptions applied. Danny introduced evidence that the children would be placed in an "intolerable situation" if returned to Germany, by being detained in foster care and/or exposed to further neglect by Julie. Danny also submitted evidence that Julie had asked him to come and get the children, and consent is another ICARA exception. Also, the children's preferences were another potential ICARA exception, since they were 13 and 11 at the time of trial. (While the appeal was pending, a dependency case was filed; the court of appeals observed that any further family court proceedings would be stayed while the dependency case was pending.) (MM)

TERMINATION OF PARENTAL RIGHTS

In re P.A. – filed October 2, 2007, Second Dist., Div. Three
Docket No. B196331

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B196331>

Father appealed termination of parental rights arguing that the juvenile court erroneously denied family reunification services without a completed affidavit of due diligence and that the juvenile court's failure to find him unfit as a parent precluded termination of his parental rights. Father's whereabouts were unknown when P.A. was detained from the mother and the trial court ordered a due diligence on him. At the jurisdiction hearing, the trial court noted that the declaration of due diligence was

incomplete and continued the matter for DCFS to file a completed one. At a subsequent hearing, the trial court found notice proper, directed DCFS to file a completed declaration of due diligence, found the children dependents of the court, and denied father reunification services under section 361.5, subdivision (b)(1). The trial court then continued the matter for DCFS to submit the declaration of due diligence. On the continued date, DCFS submitted due diligence information for another alleged father. Prior to the section 366.26 hearing, the social worker left messages and gave notices to the father through the paternal grandmother. At the section 366.26 hearing, the trial court advised the paternal relatives that P.A. was going to be adopted and father needed to contact the social worker immediately if he did not agree. Before terminating parental rights, the trial court found that the father had not maintained any involvement in the child's life, had not provided support, and had not seen the child for two and a half years.

Affirmed. The appellate court found that while the due diligence declaration was inadequate, the father forfeited the right to raise the issue on appeal because he submitted to the jurisdiction of the juvenile court. The appellate court noted that while the appellate court may review an error despite a party's failure to raise it below if due process rights are involved, father's persistent avoidance of responsibility for P.A. and failure to seek any relief in the juvenile court rendered the forfeiture rule appropriate. In addition, the appellate court found the trial court's detriment findings were sufficient to support terminating father's parental rights. (JC)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

07-32 Child Abduction and the Recovery of an Abducted Child

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0732ChildAbduction.doc>

This FYI reminds CSWs of the steps they are supposed to take to locate a child under juvenile court supervision that has been abducted or kidnapped by a parent, legal guardian, relative or non-related individual, and who they are supposed to notify of the abduction. (SA)

Procedural Guides:

300-506.05. (REV) Conversations With Attorneys And Other Non-DCFS Court Staff

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050605v1007.doc>

This procedural guide was revised to include the creation of Los Angeles Dependency Lawyers (LADL), addresses the fact that LADL has hired their own investigators and social workers and explains how CSWs are supposed to interact with these LADL employees. (SA)

1200-500.60. (REV) Compromise of Child Support

Link to Procedure:

<http://lacdfs.org/Policy/Hndbook%20CWS/1200/120050060v1007.doc>

This procedural guide has been updated to include guidelines for determining whether a parent meets the requirements to have his/her child support payments lowered or even eliminated in cases where the parent accrued child support debts while his/her child was receiving out-of-home care services and the parent and child have now reunified. (SA)

1200-501.30. (REV) Travel Policy, Travel and Expense Reimbursement

Link to Procedure:

<http://lacdfs.org/Policy/Hndbook%20CWS/1200/120050130TravelV1007.doc>

This procedural guide sets forth procedures for travel for staff and children to counties outside of Los Angeles and adjacent counties. It has been revised with updated reimbursement amounts, phone numbers, and current practice for requesting travel authorization for Independent Living Program eligible youth. (SA)

0200-509.35. (REV) Adoptive Placement

Link to Procedure:

<http://lacdfs.org/Policy/Hndbook%20CWS/0200/020050935v1007.doc>

This procedural guide has been revised to include current procedures for adoptive placement, including cases in which termination of parental rights is on appeal and cases where the timeframe for birthparents to file an appeal has not expired. This guide also includes information about availability for Independent Living Program services for children adopted after their 16th birthday. (SA)

0600-506.10. (REV) Child Health And Disability Prevention (CHDP) Program

Link to Procedure:

<http://lacdfs.org/Policy/Hndbook%20CWS/0600/060050610CHDPv1007.doc>

This policy guide was revised to include updated information about the health care program, Child Health and Disability Prevention (CHDP). A link to the California CHDP and DCFS Health website is provided in the procedure. (SA)