



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASE LAW**

#### **CONTEMPT**

*In re Nolan W.* – filed November 20, 2007, Fourth Dist., Div One

Docket No. D050408

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/D050408.DOC>

Minor was detained from mother on the basis of substance abuse. At the jurisdiction/disposition hearing, the court ordered mother to enroll in a Substance Abuse Recovery Management System (SARMS) program and advised her that failure to enroll or attend could result in contempt findings. The court found mother non-compliant with SARMS and sentenced her to 300 days in custody. Although the court stayed imposition of the sentence on condition that mother enroll in and complete a residential program, mother failed to do so and the court lifted the stay and ordered mother to serve her sentence, terminated services, and set a section 366.26 hearing. Eventually the court also terminated parental rights. Mother appealed the contempt order, arguing that the trial court did not have authority to incarcerate parents for substance abuse or coerce substance abuse treatment.

Relief granted and judgment of contempt annulled. The court noted that although the procedure for challenging a contempt order is by way of a writ petition and not an appeal, because orders of incarceration require prompt review, it would treat her appeal as a petition for extraordinary writ. The court found that the trial court abused its discretion in sentencing mother for contempt of SARMS orders. Civil contempt is considered non-

punitive, unlike criminal contempt, as its purpose is only to compel compliance with a lawful court order. The purpose of SARMS orders is to ensure the parent refrain from drug use and complies with the treatment program, and the punitive component is only to provide the parent an incentive to do so. The trial court's purpose in imposing the sentence was to punish mother for not enrolling in a residential treatment program and not to coerce her into complying with court orders, evidenced by the fact that mother had already been terminated from SARMS and reunification services were terminated at the time the stay was lifted. (SA)

## **FAMILY LAW ISSUES**

*In re Alexandria M. et al* – filed October 16, 2007, Fourth Dist., Div. One  
Docket No. D050407

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D050407.DOC>

Minors were detained from their mother and placed with their father. Throughout the proceedings, mother and father had several disputes over visitation with the children. After the 12-month review hearing, all parties were able to agree upon a settlement regarding custody and visitation, and agreed that dependency jurisdiction would be terminated. The trial court declined to accept the agreement and determined the matter needed to be litigated. After litigation, the court ordered joint custody with no primary custody or residence, set out a visitation schedule for each parent, eliminated child support on its own motion, and terminated dependency jurisdiction. Father appealed, asserting that the trial court exceeded its authority by rejecting the parents' settlement agreement as there was no evidence that continued supervision was necessary, that the custody schedule the court ordered promotes confusion and instability, that the court erred in suspending child support payments, and that the court showed bias against the father.

Affirmed in part; reversed in part and remanded for further proceedings in the family court. The appellate court affirmed the order terminating jurisdiction but held that the trial court abused its discretion by arbitrarily rejecting the settlement agreement without considering it or even asking the parents their understanding of the terms, and by not terminating jurisdiction at that time and referring the matter to the family court. The court was required to terminate jurisdiction unless DCFS established that conditions remained that would justify the court taking jurisdiction of the children under Welf. & Inst. Code § 364. But DCFS did not show that custody with either parent posed a continued risk to the children requiring court supervision. The appellate court further held that the trial court erred in terminating child support payments because it lacked jurisdiction to do so. The Welf. and Inst. Code does not give authority to a juvenile court to make orders concerning child support and Family Code sections that address child support have not been expressly applied to juvenile dependency matters. The appellate court declined to consider father's assertions regarding the custody schedule and contentions of bias. (SA)

## **FAMILY REUNIFICATION SERVICES, WIC 366.21(e)**

*In re Jesse W.* – filed Nov. 21, 2007, Fourth Dist., Div. One  
Docket No. D051108

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D051108.DOC>

Infant and two-year-old were detained from mother because she stabbed father with a knife, and placed with father. County agency later filed a supplemental petition under WIC 387 to detain children from father, because he allowed mother to return to the home. The jurisdiction and disposition hearing on the WIC 387 petition was set on the same day as the six-month hearing on the original petition. The juvenile court terminated mother's reunification services because she had not visited the children or complied with the case plan. The court gave father six months of services. Mother appealed, arguing that the court could not terminate mother's services when father was still receiving services and a WIC 366.26 hearing had not been set.

Affirmed. WIC 361.5(a) and 366.21(e), construed together, give the juvenile court discretion to terminate a parent's services at the six-month hearing if the case involves a child under three and the parent has not made progress toward reunification – even if the other parent is still receiving services and a WIC 366.26 hearing has not been set. Terminating services in a case where there is no real chance of reunification within the statutory time limits eliminates uncertainty in the lives of young children and avoids a waste of resources. (McDonald, J., dissented because WIC 366.21(e) says that in all cases where the court neither returns the child to the parent nor sets a WIC 366.26 hearing, services "shall continue to be offered.") (MM).

## **FIFTH AMENDMENT, WIC 355.1, SANCTIONS**

*In re Mark A.* – filed Nov. 13, 2007, Fourth Dist., Div. Three  
Docket No. G038332

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G038332.DOC>

Dependency petition alleged that father struck mother while she was holding a baby, causing the baby to fall and break his leg. Father was arrested on criminal charges. At the jurisdiction and disposition hearing, father refused to testify. The juvenile court ordered him to testify, on the basis that he could not assert his Fifth Amendment privilege because WIC 355.1(f) prohibited the use of his testimony in any other case. Father still refused to testify, and the juvenile court struck the testimony of his other witnesses as an 'evidence sanction.' Father appealed.

Affirmed. The juvenile court erred in ordering father to testify, because the statutory immunity provided by WIC 355.1(f) is narrower than the Fifth Amendment privilege against self-incrimination. WIC 355.1(f) only prohibits the use of a parent's testimony in other proceedings, but not the use of other evidence derived from his testimony

(“derivative use”). The county agency could have asked the court to offer father immunity from both use and derivative use of his testimony, under Rule 5.548(d)(1). But since this offer was not made, father was entitled to invoke his Fifth Amendment privilege. The purpose of WIC 355.1(f) is to allow a willing parent to testify and participate in therapy without fear that his statements will be used in a criminal case, not to force an unwilling parent to testify. Moreover, even if father were not entitled to refuse to testify, the proper procedure would have been a contempt hearing and, if father was found in contempt, a fine and/or jail time. The juvenile court erred in striking the testimony of other witnesses as a sanction. However, the juvenile court’s errors were harmless beyond a reasonable doubt because the other witnesses’ testimony was not helpful to father. (MM).

## **GUARDIANSHIPS**

*In re Angel S.* – filed October 23, 2007, Third Dist., Div.

Docket No. C054446

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C054446A.DOC>

Legal guardian appealed termination of her probate guardianship in a dependency proceeding. Angel was detained from her probate legal guardian and the guardian failed to reunify. Rather than filing a WIC section 728 motion to terminate the guardianship, the Department filed a section 388 petition. The court set the matter for a hearing and notice was provided to the mother and guardian but not the probate court or alleged father whose address was unknown and who had not had contact with the minor. At the section 388 hearing, the court terminated the probate guardianship and the guardian objected to the termination but not the process of termination. The guardian appealed, asserting that the proper statutory procedure for terminating probate guardianships is through filing a section 728 motion and not a section 388 petition for modification and that the court erred in not giving notice of the termination proceeding to the father. According to the guardian, the court acted in excess of its jurisdiction and the order terminating is reversible per se.

Affirmed. Because Angel is now the subject of a dependency petition, the juvenile court has fundamental jurisdiction to exercise its power to terminate the probate guardianship, via a section 728 motion. A section 388 petition is not the proper vehicle to seek termination of a probate guardianship in juvenile court. However, the requirement of filing a 728 motion is only a procedural requirement and is subject to forfeiture for failure to object. Furthermore, the procedure used was not prejudicial because a 388 petition entails a greater burden of proof in that it requires a showing of best interest and changed circumstance while a 728 motion only requires showing that termination is in the best interest of the minor. Also, failure to notice only compels reversal if the party was denied notice and has asserted his/her own right to notice in the trial court or on appeal. The guardian here received notice and had an opportunity to be heard before termination. As such, any delay in notice to the Probate Court of the outcome of the termination hearing, as required under section 728, also did not affect the guardian. (SA)

## **HEARSAY, WIC 355**

*In re B.D.*,--filed November 7, 2007, Third Dist.

Docket No. C053745

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C053745.DOC>

Children appealed the dismissal of a dependency petition on the grounds of insufficient evidence. Four eyewitnesses had reported that mother had physically abused her children in a public place. Mother denied the abuse, and objected to the use of the witness statements under WIC 355. The county agency had submitted on the report without calling any witnesses. The trial court dismissed the petition on the grounds that no independent evidence existed to support the allegations. Reversed and remanded. WIC 355 does not preclude the admission of hearsay, but merely requires that if an objection is made under § 355, hearsay evidence may not constitute the exclusive basis for finding jurisdiction. In this case, there was sufficient independent evidence to sustain the petition, including the mother's admissions to the social worker and the children's fearfulness. (PB)

## **OTHER LEGAL DEVELOPMENTS**

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

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

07-37            Transportation Requests for Minor Mothers

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0737TransportMinorMothers.doc>

This FYI reminds CSWs that that the Court Transportation Unit can only transport children ages four years and older that are placed in licensed unrelated foster homes, group homes, institutions, select psychiatric hospitals, and Foster Family agencies within Los Angeles County. The unit cannot transport children of minor mothers who are under four years, and therefore, other arrangements need to be made for childcare. (SA)

#### **Procedural Guides:**

0300-306.05 (REV) Notice of Hearing for Juvenile Court Proceedings

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030605NoticeV1107.doc>

This procedural guide has been revised to reflect the new requirements of California Rules of Court Rule 5.534, which requires that a caregiver receive notice of and have a right to be heard at any status review or permanency hearing, WIC 366.26 hearing, and any disposition hearing that serves as a permanency hearing under WIC section 361.5(f). It also informs CSWs that Rule 5.534 establishes procedures for distribution and use of the JV-290 Caregiver Information Form. (SA)

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

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050300ChildSupportV1107.doc>

This procedural guide has been revised to instruct CSWs on how to fill out the CW 51 form, “Child Support- Good Cause Claim for Non-Cooperation,” and the various factors to consider when determining whether the child’s case should be referred to the local child support agency for child support payments by parents. (SA)

0070-548.14 Referrals From Family Law or Probate Court to Investigate Possible Child Abuse

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054814V1107.doc>

This procedural guide informs CSWs of the procedure to follow when contacted by Family Law or Probate Court to conduct an investigation to determine if a child comes within the provisions of WIC section 300. It also discusses WIC section 827 and who has access to case records in custody matters. (SA)