



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

Vol. 4, No. 10 May 27, 2008

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), Patricia Bell (PB) and Sophia Ali (SA)

© 2008 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](http://www.clcla.org).

### **NEW DEPENDENCY CASE LAW**

#### *ICWA*

***In re Rayna N.***- filed May 23, 2008, Second Dist., Div. 4

Docket No. B206049

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B206049.DOC>

One month before the six-month review hearing, mother informed the social worker for the first time that she had Native American heritage. The social worker interviewed maternal relatives; completed the required Indian ancestry questionnaires; and sent notice of the proceedings to the parents, BIA, Secretary of the Interior, and numerous Apache Tribes by certified mail, return receipt requested. The hearing was continued, and at the continued hearing, the juvenile court terminated reunification services for both parents and set a WIC 366.26 hearing even though the social worker did not provide the court with a copy of the return receipts. Mother filed a writ petition claiming that any orders issued in violation of the notice requirement are void and must be reversed in their entirety.

Preemptory writ of mandate issued. WIC 224.2(d) and 25 USC 1912 state that no hearing shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs. Thus, the juvenile court erred in proceeding with the six-month review hearing when DCFS did not provide the court a copy of any return receipts. However, when the juvenile court fails to comply with ICWA notice requirements, WIC 224.2(d) does not prohibit a limited reversal and remand to permit compliance. The Legislature's failure to affirmatively prohibit the practice of limited reversals when enacting WIC 224.2 suggests that it did not intend to disprove this procedure. (SA)

*POWER OF COURT TO DISMISS PETITIONS*

***DCFS v. S.C.L.A. (Stacy P.)***--Filed May 16, 2008, Second Dist., Div. 8

Docket No: B204618

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/B204618.DOC>

County agency filed a petition and sought to detain infant based on facts that: 1) infant's sibling had previously suffered serious physical abuse (at a time when sibling was seven months old); 2) siblings had previously been adjudicated dependents due to domestic violence between mother and father; and 3) mother had failed to participate regularly in court-ordered counseling to address domestic violence issues. At the detention hearing, the juvenile court ordered baby released and also, on its own motion, dismissed the petition, on the grounds that it failed to allege "new facts." County agency filed a writ petition, arguing that the court was without the power to dismiss the petition at a detention hearing.

Relief granted in part. Juvenile court was without the authority to dismiss the petition at the detention phase of dependency case. The statutory scheme does not contemplate summary dismissal at detention. Instead, the county agency must be permitted time to investigate and develop the facts. Case can be dismissed at the adjudication, or, alternatively, a party may file a motion "akin to a demurrer" which under local rule 17.15(d) requires notice and a separate hearing. (PB)

**UNPUBLISHED CASES**

*UCCJEA; HAGUE CONVENTION*

***In re Jorge G.*** – Filed May 22, 2008, Second Dist., Division One

Docket No: B201604

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B201604.DOC>

Jorge G. was detained because he had no family and no means of support in the United States. His parents were in prison in Mexico, and his paternal grandmother was also in prison in Mexico for murdering his paternal grandfather. His maternal grandparents were deceased and he had no other relatives willing to care for him. Jorge's age was in dispute, but the juvenile court found based on x-rays and relatives' testimony that he was about 17. Jorge told DCFS that when he was younger his parents physically abused him, gave him drugs, and involved him in robberies and drug smuggling. He first came to the United States in 2004, and survived by working odd jobs and living in shelters. The juvenile court found that it had temporary emergency jurisdiction under the UCCJEA, sustained a dependency petition under WIC 300(a), (b), and (g), removed Jorge from the parents' custody and ordered reunification services. Parents appealed.

Affirmed in part and reversed in part. The juvenile court properly took jurisdiction under the UCCJEA, because Jorge was a minor who had been abandoned and was in immediate need of services. However, the court did not have personal jurisdiction over the parents because

service by mail to Mexico was inadequate under the Hague Convention; remanded for proper service on parents. (MM)

### **NON-DEPENDENCY CASES OF INTEREST**

#### *FAMILY LAW – DUE PROCESS – RIGHT TO TRIAL*

**In re Marriage of Carlsson** – Filed May 8, 2008, ordered published May 23, 2008, Third Dist.

Docket No. C053515

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C053515.DOC>

Husband and wife were engaged in trial of property and spousal support issues. After expressing impatience with husband's counsel and threatening a mistrial if she did not finish the trial quickly, family court judge left the courtroom during her examination of a witness to handle an emergency matter, and did not return. Court clerk later notified the parties that the trial was over, and they could submit declarations on the remaining factual issues, and closing briefs. The parties did so. The judge ruled against husband on most of the issues, and husband appealed.

Reversed. Family court violated due process by cutting off the trial during husband's presentation of evidence. Parties must be given a full and fair opportunity to be heard and to offer evidence. (MM)

### **OTHER LEGAL DEVELOPMENTS**

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

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

08-19 (REV) Referring Caregivers For Whole Family Foster Home Certification Training

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0819WholeFamFosterHomeTrainingFlyer.doc>

This FYI is to notify DCFS staff that Community Colleges will begin providing a 16-hour Whole Family Foster Home (W-Home) certification training, including instructions on how to develop the Shared Responsibility Plan, at the end of May 2008. (SA)

##### **Procedural Guides:**

0100-570.10 (REV) The Care Of Children Placed In Group Homes

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010057010V0508.doc>

This procedural guide was revised to inform CSWs of their responsibilities when making contact with a child placed in a group home, including assessing the child's well-being and safety, pursuant to California Department of Social Services' Manual of Policies and Procedures Division 31-320.1. (SA)

0100-570.08 (REV) The Care of Children Placed In A Licensed Foster Home, Relative/Non-Relative Extended Family Members Home Or Small Family Home

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010057008fosthomesv0508.doc>

This procedural guide was revised to inform CSWs of their responsibilities when making contact with a child placed in a foster home, small family home, or the home of a relative/non-relative extended family member, including assessing the child's well-being and safety, pursuant to California Department of Social Services' Manual of Policies and Procedures Division 31-320.1. It was also revised to inform CSWs to question children and caretakers if there are new people living in the home and to direct the new people in the home to Live Scan. (SA)

0100-570.09 (REV) The Care Of Children Placed In A Foster Family Agency Home (FFA)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010057009FFAv0508.doc>

This procedural guide was revised to inform CSWs of their responsibilities when making contact with a child placed in an FFA home, including assessing the child's well-being and safety, pursuant to California Department of Social Services' Manual of Policies and Procedures Division 31-320.1. It was also revised to inform CSWs to question children and foster parents if there are new people living in the home and to direct the new people in the home to Live Scan. (SA)

0200-509.36 (REV) Supervision Of Fost-Adopt And Adoptive Placements

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050936v0508.doc>

This procedural guide was revised to add instructions to ensure each undocumented child receiving permanent placement services is referred to the DCFS Special Immigration unit for the purpose of applying for his/her Green Card and to inform CSWs that once the application is in process, an adoption should not be finalized and the court should not terminate jurisdiction until the process has been completed. (SA)

1200-500.05 (REV) The Indian Child Welfare Act (ICWA)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050005ICWAv0508.doc>

This procedural guide was revised to add that as of January 1, 2008 the ICWA-030 "Notice of Child Custody Proceeding for Indian Child" is to be used to notice on cases when a child may

come under the provisions of ICWA or is an American Indian child from a federally recognized tribe. (SA)

0300-503.20 (REV) Writing the WIC 366.26 Hearing Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050320v0508.doc>

This procedural guide was revised to reflect new legislation regarding the relative legal guardianship preference under WIC 366.26(c)(1)(A). It was also revised to reflect required information to be provided to relative caregivers, out-of state placement, ICWA and education. It also includes new court reporting requirements regarding child's health, such as issues surrounding the child's Body Mass Index (BMI); current procedures/mandates regarding confidentiality; SSI disability screening and provision of information regarding SSI to emancipating youth; Concurrent Planning Redesign's revised procedures; completion requirements for the Concurrent Planning Assessment (CPA); and court report and CPA signatory responsibilities. (SA)

0900-511.12 Regional Center Foster Care Rates

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060051410psycotrmedsv0508.doc>

This procedural guide offers guidelines on how to provide specialized dual agency foster care rates for children who are receiving services through Regional Center as well as receiving Aid to Families with Dependent Children-Foster Care. (SA)

0600-514.10 (REV) Psychotropic Medication Authorization for DCFS-Supervised Children

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060051410psycotrmedsv0508.doc>

This procedural guide was updated with the duties of the physician/psychiatrist, DCFS D-Rate Unit, PHNs, CSWs, Juvenile Court Psychotropic Desk Clerk, Mental Health Services, Judicial Officers, and Judicial Assistant's for the psychotropic medication authorization process. It also lists and explains the new JV forms needed for the authorization. (SA)

0070-536.10 (REV) Assessment Of Parental Incapacity

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007053610v0508.doc>

This procedural guide was updated to reflect the use of Structured Decision Making (SDM) and Team Decision Making (TDM) when assessing parental incapacity (ie-parental developmental disability, mental illness or substance abuse) to care for children; the importance of documenting all contacts, collateral contacts, police reports, medical reports, and any history of parental incapacity before closing a child abuse referral; the importance of making a referral to the Multidisciplinary Assessment Team (MAT) and collaborating with DMH and other community partners when

a worker decides to detain a child; and reflects specific information to include in court reports regarding the parent's incapacity. (SA)

1200-500.00 (REV) Nondiscrimination of Clients, Out-Of-Home Caregivers, and Adoptive Parents

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/12005000v0508.doc>

This procedural guide was revised to clarify the Multiethnic Placement Act and the Interethnic Adoptions Provisions Act, in terms of using race, color or national origin in placement decisions. (SA)

0100-520.50 (REV) Assessment Of A Potential Caregiver's Ability to Meet A Child's Needs

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052050V0508.doc>

This procedural guide was revised to clarify the Multiethnic Placement Act and the Interethnic Adoptions Provisions Act, in terms of using race, color or national origin in placement decisions. (SA)