



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

DE FACTO PARENTS

In re R.J.--Filed June 23, 2008, Third Dist.

Docket No: C056084

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/C056084.DOC>

Two children were adjudicated dependents pursuant to WIC 300. The trial court denied the paternal grandmother's request that the children be placed with her. Grandmother thereafter filed a request for de facto parent status, which included a statement that set forth the activities she participated in with the children. The trial court denied the request for de facto parent status without a hearing. Grandmother appealed, arguing that the juvenile court erred in not affording her an evidentiary hearing, and that the denial of a hearing violated her right to procedural due process. Affirmed.

Grandmother argued that because she made out a prima facie case for de facto parent status, she was entitled to an evidentiary hearing on the issue. However, a prima facie showing does not in itself entitle a person to an evidentiary hearing. Further, in this case, the trial court did not abuse its discretion in finding that grandmother failed to establish a prima facie showing of de facto parent status. Although grandmother had shown a positive, nurturing and loving relationship with the children, she failed to show she had “assumed, on a day-to-day basis, the role of parent . . .” as required under California Rule of Court 5.502(10). Further, grandmother does not have a constitutionally protected interest in the care and custody of the children, and therefore the denial of a hearing did not violate due process of law. (PB)

DENIAL OF REUNIFICATION SERVICES; WIC 361.5(b)(4)

Mardardo F. v. Superior Court – filed June 30, 2008, Third Dist.

Docket No. C058569

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C058569.DOC>

Father petitioned for a writ of mandate to vacate orders of the juvenile court denying him reunification services and setting a WIC 366.26 hearing. Father raped and murdered a 13-year old girl in 1994 when he was 15 years old. He was committed to CYA for a term of 25 years and was dishonorably discharged in April 2004. Father's CYA records indicated that he had not benefited from his commitment, that he remained a threat to society, and that he had been diagnosed with anti-social personality disorder. At the disposition hearing for S.F., DCFS successfully argued that father should be denied reunification services pursuant to WIC 361.5(b)(4) and that there was no clear and convincing evidence that reunification services would be in the child's best interest. Father argued in his petition for extraordinary writ that the language in section 361.5(b)(4) did not apply to him.

Writ denied. The appellate court found that the phrase "the parent or guardian of the child" in section 361.4(b)(4) refers to the parent's or the guardian's current status in the current dependency proceeding, and the phrase "the death of another child" in the section means the death of any other child. Relying on the statutory context and legislative history, the appellate court found that "the parent or guardian of the child" does not mean that one must have been a parent or guardian at the time of causing the death of another child and noted that section 361.5(b)(12) does not require that the person must have been a parent or guardian at the time he or she was convicted of a violent felony. In addition, the fact that the Legislature specifically included terms such as "sibling" and "half-sibling" in other subdivisions of section 361.5, indicates its intent that section 361.5(b)(4) does not require that the parent be related to the child that died. The appellate court found that section 361.5(b)(4) applied and that father did not come close to showing that reunification services would be in his child's best interest. The evidence showed that father failed to complete a sex offender program, had little to no insight into his offense, and engaged in violent and sexually inappropriate behavior throughout the course of his CYA commitment. In addition, a 2007 psychological evaluation disclosed that his personality functioning reflects a clear tendency to violate the basic rights of others, disregard social norms and expectations, and engage in anti-social behaviors. (JC)

ICWA NOTICE REQUIREMENTS

In re Cheyenne F. - filed June 6, 2008, published July 1, 2008, Fourth Dist., Div. 2

Docket No. E044339

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E044339.DOC>

At detention, mother stated she did not have Indian ancestry and father told the social worker he is a registered member of the Blackfeet Tribe. However, father and paternal grandmother were unable to provide any information about the paternal grandfather or father that would establish father's tribal membership or eligibility. Although the agency sent Judicial Council form JV 135 "Notice of Involuntary Child Custody Proceedings" to Indian Child and Family

Services, the BIA, and to the Blackfeet Tribe, it only included information father provided about his ancestry and omitted information concerning mother. The tribe responded that to determine whether the child was enrolled or eligible to be enrolled, it needed information about mother's extended family and asked the agency to fill out a family tree chart. The agency again sent form JV 135 to the tribe, BIA, and Indian Child and Family Services and the tribe again responded that without full names, maiden names, or birthdates it would be unable to determine the child's tribal membership. At the WIC 366.26 hearing, the court found ICWA did not apply and terminated parental rights. Mother appealed, contending that the finding that ICWA did not apply was erroneous because the agency failed to perform its mandatory duty pursuant to ICWA and WIC 224.2(a) of providing the tribe with information about her and her family despite knowing that information.

Affirmed. Although ICWA and WIC 224.2(a) require the agency to provide all known information concerning the child's parents, grandparents, and great-grandparents, and does not have an exception that permits the agency to omit information concerning the child's non-Indian relatives, the errors in ICWA notice are reviewed under the harmless error test. Unless there is any indication that information concerning mother's family was relevant to the tribe's inquiry, there is no basis to conclude that the outcome would have been different if the agency had provided the information. Further, providing information about mother would not have changed the result because father and paternal grandmother were unable to provide necessary information about the paternal relatives and the tribe needed information about both parents' extended families to make an ICWA determination. (SA)

**TERMINATION OF PARENTAL RIGHTS--SECTION 366.26(c)(1)(B)(i)
EXCEPTION**

In re S.B.--Filed June 26, 2008, Fourth Dist., Div. 1

Docket No: D052202

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/D052202.DOC>

Father was primary caretaker of three-year-old S.B. when she was declared a dependent due to mother and father's drug use. S.B. was placed with maternal grandparents. Father complied with "every aspect" of case plan, but failed to reunify with S.B. due to current health problems, which prevented him from caring for S.B. full time. Father participated in monitored visits three days a week. A bonding study was conducted which described the bond between father and S.B. as "fairly strong" or "moderate," and stated that father's relationship with S.B. vacillated between "parental" and "peer like." The trial court terminated parental rights. The trial court found that although father maintained frequent visitation with S.B. and they shared an emotionally significant relationship, there was "no evidence" to suggest that the father's relationship with S.B. was "parental" in nature. Father appealed.

Reversed. The court of appeal found there was no substantial evidence to support the trial court's finding that father did not have "some type of parental relationship" with S.B. The court specifically noted that father had been S.B.'s primary caretaker for three years, and that for the first year after she was removed from parental custody, S.B. continued to display a

strong attachment toward him. In addition, the record showed that father continued the significant parent-child relationship with S.B. after she was removed from his care, despite the lack of day-to-day contact. The court of appeal specifically rejected the county agency's position that the continuing beneficial relationship exception in WIC 366.26(c)(1)(B)(i) does not apply unless the child has a "primary attachment" to the parent. Instead, the exception may apply if the child has a "substantial, positive, emotional attachment" to the parent. (PB)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-28 Court Transportation Requests

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0828CourtTransportation.doc>

This FYI is to remind CSWs that when a child has special needs, a medical condition, diet restrictions, allergies, a specified medication regimen, or other care needs, they must indicate this information under the "Special Instructions" section at the bottom of form DCFS 4360, "Request for Juvenile Court Transportation and Shelter Care Services." The CSW also needs to remind the caregiver to send the appropriate dosage of medication/and or medical equipment to court with the child. In addition, if there are specific court instructions, such as two siblings that may not have contact with each other, the CSW must also indicate this information on the "Special Instructions" section of the form. (SA)

08-30 Linkages and (Child Welfare Services/Case Management System)
CWS/CMS

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0830LinkagesandCWSCMS.doc>

This FYI discusses Linkages, an interdepartmental partnership between the Department of Children and Family Services and the Department of Public Social Services to address the common barriers that limit parents' ability to work and keep their children safely at home. (SA)

08-31 Child Abduction and the Recovery of an Abducted Child

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0831ChildAbduction.doc>

This FYI, which cancels FYI 07-32, is to remind CSWs of their responsibilities when a child is abducted or kidnapped by a parent, legal guardian, relative, or non-related individual, including children under a home of parent order. (SA)

Procedural Guide:

1200-500.80 (REV) Connecting DCFS Individuals/Families to Programs
Administered by the Department of Public Social Services

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050080v0708.doc>

This procedural guide was revised with updated information about Linkages, an interdepartmental partnership between the Department of Children and Family Services and the Department of Public Social Services to address the common barriers that limit parents' ability to work and keep their children safely at home. (SA)