



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASE LAW**

#### **ABANDONMENT; Fam. Code § 7822**

*In re Esmeralda S.* – Filed July 22, 2008, Fourth Dist., Division Two

Docket No. E045044

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E045044.DOC>

Esmeralda, age seven months, was detained because mother fled from police with Esmeralda in the car, and mother had a history of mental illness and bizarre behavior. At detention, mother's counsel requested a GAL and the court appointed one without a hearing. Also at detention, mother said she had Indian heritage, but needed to get information from her grandmother. The court ordered the GAL to assist mother in completing the JV-130 form. Mother later marked the box on the form indicating she did not have Indian ancestry. After 12 months of services, the court terminated parental rights. Mother appealed.

Affirmed. County agency concedes it was error to appoint the GAL without a hearing, but the error was harmless. *James F.* held that harmless error analysis applies when a GAL is wrongfully appointed, but did not clarify what standard of review applies, or whether ‘harmless error’ means that the GAL would have been appointed even if there had been a hearing, or that the outcome of the case would have been the same with or without a GAL. The latter analysis is more consistent with the goal of avoiding needless reversal of dependency cases. As for the standard of review, even assuming the error must be harmless beyond a reasonable doubt, it was harmless in this case. Mother's only contention is that if a GAL had not been appointed, she could have asserted that ICWA applied. But mother was

present and spoke at several hearings, so the GAL would not have prevented her from raising this issue. Moreover, mother does not claim she actually had Indian heritage, only that she might have, so any claim of prejudice is speculative. [In an unpublished part of the opinion, the court of appeal held that the juvenile court did not violate the ICWA duty of inquiry.] (MM).

## **RESTRICTION OF PARENT'S RIGHTS TO DIRECT EDUCATION; WIC § 245.5**

*Jonathan L. v. Superior Court*—Filed August 8, 2008, Second Dist., Div. Three

Docket No. B192878

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/B192878A.DOC>

Children were declared dependents based on parents' physical abuse of sibling. Parents were uncooperative with county agency, and appeared to be coaching children on what to say to social workers. For reasons of safety, children's attorney requested that the juvenile court order children attend public or private school, and not be home schooled, so that they would have access to mandated reporters. Juvenile court refused to issue order, citing parents "constitutional right to home school their children." In its initial decision, court of appeal ruled that under California's compulsory education laws, parents could not home school their children unless they held a teaching credential. On rehearing, court of appeal ruled that California's statutory scheme does allow for home schooling under the private school exemption for compulsory attendance. The right to home school could be restricted in the case of children who are declared dependents under WIC section 300. The court of appeal assumed that such a restriction of parents' right to direct the education of their children is subject to strict scrutiny, but held the order valid because the state has a compelling state interest in protecting the safety of children, and the restriction was narrowly tailored. (PB)

## **REVIEW OF DENIAL OF CRIMINAL RECORDS EXEMPTION**

*In re Esperanza C.*-- filed August 7, 2008, Fourth Dist., Div. 1

Docket No. D051521

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D051521.DOC>

Maternal great-uncle and wife sought placement of child after detention. Uncle was a licensed preacher and assistant pastor at local church and his four teenage children were doing well in school and either worked or participated in sports. However, the aunt and uncle had a history of substance abuse, involvement with child protective services because of substance abuse and domestic violence, and the uncle had a criminal history over 30 years old, including a conviction under Penal Code section 272. The agency *believed* the conviction under Penal Code section 272 might involve lewd and lascivious conduct with a child 14 years old or younger. Although the agency sought a criminal records exemption, the administrative body declined to grant one and classified the offense as a non exemptible disqualifying offense. The uncle filed a grievance with the agency, explaining that the conviction was for supplying beer to his 17 year old brother and friends, but the grievance officer did not overturn the

denial of the exemption. Mother and child filed a WIC 388 petition asking the court to review the agency's placement decision for abuse of discretion and to place the child with the relatives. The court found that the conviction was exemptible but said it did not have jurisdiction to review the agency's denial of the criminal records exemption and summarily denied the petitions. Mother and child appealed the orders denying the WIC 388 petitions and terminating parental rights.

Reversed and remanded. The juvenile court has authority to review for abuse of discretion the agency's denial of a criminal records exemption. If the juvenile court determines the agency abused its discretion in the criminal records exemption process, the court has limited authority under WIC 388 to direct the agency to consider the request for an exemption under the appropriate legal standard. Here, the agency concluded that the uncle's conviction was non exemptible merely because there was a lack of evidence showing that the conviction did not involve lewd and lascivious acts with a child. However, an applicant is not required to prove that he has not been convicted of a particular offense, or that his Penal Code section 272 conviction is an exemptible offense. Nor may the agency just *infer* that the uncle's conviction involved lewd and lascivious behavior. Either the agency has a valid record that the applicant was convicted by proof beyond a reasonable doubt of a non exemptible offense or it does not. Thus, unless the agency has a record that uncle was convicted of lewd and lascivious behavior under Penal Code section 272, its classification of the offense as non exemptible is erroneous as a matter of law and should be reviewed for abuse of discretion. On remand, the juvenile court should hold a hearing on the WIC 388 petitions, and if it determines that the agency abused its discretion in the criminal records exemption process, it should order the agency to evaluate the uncle's request for an exemption under the correct legal standard. (SA)

## **TERMINATION OF PARENTAL RIGHTS**

*In re P.C.*--Filed July 23, 2008, Fourth Dist., Div. Three

Docket No: G039898

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/G039898.DOC>

Child was declared dependent based on subdivisions (a) and (b) of WIC section 300. Family reunification services were ordered and mother's visitation was gradually changed from monitored to unmonitored. At the 18 month review hearing, mother had complied with the case plan and the only thing preventing reunification was mother's inability to find suitable housing. The juvenile court terminated reunification services and set the matter for a WIC 366.26 hearing. At the 366.26 hearing, the court found that the section 366.26(c)(1)(B)(i) exception did not apply and terminated parental rights. Mother appealed, on the grounds that the only reason for the juvenile court's finding of detriment was based on her inability to find suitable housing.

Reversed. In effect, the finding of detriment of return to mother was based on her inability to find suitable housing which in turn was based on her poverty, which by itself is not an

acceptable basis upon which to find detriment. In this case, the social worker's assistance to mother with respect to housing consisted solely of advising her to look in Pennysaver. Therefore, the juvenile court's finding that reasonable services had been provided was not based on substantial evidence. (PB)

### UNPUBLISHED CASES

*In Re Garrett G.* – filed July 22, 2008; Second District, Div. Three

Docket No: B198051

Link to Case: <http://www.courtinfo.ca.gov/opinions/nonpub/B198051.DOC>

Father and mother divorced. Mother had primary custody of Garrett and father had visitation. Garrett was detained due to physical abuse by father. Father had history of domestic violence convictions and was disruptive at court hearings. After detention hearing, court issued restraining order against father. Father did not appear at jurisdictional hearing. His attorney said father was absent due to an injury, and that he was not authorized to act on father's behalf because father wanted new counsel. The court denied a continuance and held the jurisdictional and dispositional hearings. The next day, father appeared and the court held a *Marsden* hearing and appointed new counsel. Father did not comply with any part of the case plan except visitation. At the six month hearing, the court held a second *Marsden* hearing and again appointed new counsel. The court then gave father a choice between continuing juvenile court jurisdiction and transfer to family law court. Father said he did not understand this choice. The court terminated jurisdiction and gave sole legal and physical custody to mother and monitored visitation to father, and allowed mother to choose the monitor and the time, place and length of visits. Father appealed.

Affirmed in part and reversed in part. Father's appeal of the restraining order was untimely. Restraining orders are immediately appealable under CCP 904.1, and father's notice of appeal was filed more than 60 days after it was issued. The juvenile court did not err in holding the jurisdictional hearing in father's absence, since the court had warned father several times that the hearing would go forward if he was not there. The court did not err in refusing to hold a *Marsden* hearing before the jurisdictional hearing, because father did not appear and assert that his attorney was inadequate. However, the court erred in terminating jurisdiction without holding a hearing as required by WIC 366.21(e) and 364. The error was prejudicial because there were disputed factual issues relevant to custody and visitation. Also, the court erred in failing to specify the time, day, place and transfer method in the visitation orders, as required by WIC 213.5(l) and Fam. Code 6323(c). (MM)



## OTHER LEGAL DEVELOPMENTS

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

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

08-33 (REV) Update on DCFS Group Home/FFA Placement Hold Status

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0833GroupHomeFFAUpdate.doc>

This FYI is to notify staff that, effective immediately, the placement hold status for the following Foster Family Agencies (FFAs) and group homes has been lifted: Holy Family Services FFA, McKinley Children's Center FFA, Olive Crest Treatment Center FFA, Delianne-Lucille– DeiLu Achievement Home, Olive Crest RCL 14, Los Angeles Youth Network, Pioneer Boys Ranch, Macro Homes, Positive Path, McKinley Children's Center, San Gabriel Children's Center, The Way in Youth Shelter-Salvation Army, The House of Bethesda, and Project Six - Help Group. (SA)

#### **Procedural Guide:**

0070-548.30 Point of Engagement: Up-Front Assessment (UFA)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054800Upfrontv0708.doc>

This procedural guide establishes an Up-Front Assessment (UFA) in all DCFS offices in Los Angeles County and explains the procedure for conducting UFAs. UFA's goal is to prevent unnecessary out-of-home placement through more thorough investigation and assessment, and where detention is necessary, provide information to allow for more meaningful case plans to be developed. This will be achieved by utilizing experts in the area of Mental Health, Substance Abuse, and Domestic Violence to provide comprehensive assessments and to connect families with treatments and ancillary services in the community. (SA)

0080-506.10 (REV) Selecting and/or Arranging the Most Appropriate Services for Children and Families

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050610v0708.doc>

This procedural guide, which describes various types of services that may be selected to refer the child and family to after assessing the level of safety to the child(ren), the family's strengths, the treatment approach best suited to the particular problem being addressed, and the resources available in the community, has now combined Procedural Guide 0080-506.10 Selecting Appropriate Services for Children and Families with Procedural Guide 0080-506.15 Referring Parents to Service Providers. It also added a step to complete the SDM tool, Family Strengths and Needs Assessment. (SA)

0100-510.61 (REV) Placement Responsibilities: Foster Child's Needs and Case Plan

## Summary

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051061V0708.doc>

This procedural guide was updated with a reference to Procedural Guide 0080-505.20 Health and Education Passport as well as links to California Code, Division 31 Regulations, and Title 22 Regulations. It was also updated with additional clarifying language regarding the Multiethnic Placement Act in terms of using race, color, or national origin in placement decisions. (SA)

0200-507.15 (REV) Assessment of Petitioner(s), Birth Parent(s) and Child for an Independent Adoption

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050715V0708.doc>

This procedural guide was updated with the requirements of the federal Adam Walsh Child Protection and Safety Act of 2006 which requires a completed Federal Bureau of Investigation (FBI) criminal history check prior to approval of an adoption home study. Also, the child abuse and neglect registry must be checked for any state that a prospective adoptive parent(s) or any other adult(s) residing in the home has resided in the past five years, if that state maintains a registry. The requirement to check other state child abuse registries for a prospective adoptive parent(s) or any other adult(s) residing in the home applies to requests for an adoptive home study received on or after January 1, 2008. This requirement also applies to any new adult(s) who move into a home of a prospective adoptive parent(s) on or after January 1, 2008, if the home study was approved prior to January 1, 2008. (SA)

0200-509.40 (REV) Terminating An Adoptive Placement

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050940v0708.doc>

This procedural guide was revised to reflect the recent legislation that provides that a relative caregiver's preference for legal guardianship rather than adoption under circumstances that do not include an unwillingness to accept legal or financial responsibility for the child may not constitute the *sole* basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement. It was also updated to notify staff of the procedure to follow if parental rights are reinstated as a result of an appeal. (SA)

0200-519.10 (REV) Adoption of Children Under the Interstate Compact on the Placement of Children (ICPC)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020051910ICPCv0708.doc>

This procedural guide was revised to add additional requirements for the Safe and Timely Interstate Placement of Foster Children Act of 2006 that states that an ICPC adoptive home study should be completed within 60 calendar days. (SA)

0600-506.00 Monitoring A Youth's Body Mass Index (BMI)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050600BMIV0708.doc>

This procedural guide informs staff that the BMI of all dependent children must be calculated by their physician and documented on the DCFS 561(a), Medical Examination Form. It also outlines the timeline for doing so, the duties of the social worker, and the procedures for the physician, social worker, and child's counsel to follow for children whose BMI is not in the normal range. (SA)

0900-515.10 (REV) Meal Reimbursement/Food Certificates/Gift Cards

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090051510v0708.doc>

This procedural guide was revised to reflect the current changes/practices regarding issuance of food certificates and gift cards: i.e., food certificates and gift cards are provided to Regional Offices for the purpose of providing food and emergency clothing for children waiting for placement, emergency placement, pre-placement visits, or when a child is transported to court, medical facility or similar situations. (SA)

01000-504.10 (REV) Case Transfer Criteria And Procedures

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1000/100050410CaseTransferCriteriaV0808.doc>

This procedural guide was revised to provide clarification about the procedure for transferring cases from one DCFS office to another after parental rights have been terminated. (SA)

1200-500.30 (REV) DCFS Countywide Alcohol and Drug Testing Program

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050030DrugTestingServicesv0708.doc>

This procedural guide was revised to inform CSWs of recommended alternative testing resources for clients. In addition, the DCFS 5007, Consent for the Release of Confidential Alcohol and/or Drug Testing Results, has been developed and is to be signed by the client and sent with the referral. Revised referral forms are noted, in addition to notification that referrals for random testing will last no more than six months. (SA)

C300-203 (REV) Food Certificates/Gift Cards

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20Clerical/c300/C300203v0708.doc>

This procedural guide was revised to reflect the current changes/practices regarding issuance of food certificates and gift cards: i.e., food certificates and gift cards are provided to Regional Offices for the purpose of providing food and emergency clothing for children waiting for placement, emergency placement, pre-placement visits, or when a child is transported to court, medical facility or similar situations. (SA)