



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

FAMILY REUNIFICATION SERVICES

In re Adrianna P.—Files August 20, 2008, Fourth Dist., Div. One

Docket No : D052400

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/D052400.DOC>

From May 2002 to June 2007, Adrianna and M.G. were dependents of juvenile court due to mother's physical abuse of Adrianna and domestic violence between mother and M.G.'s father, Maurice. Adrianna's father, Andrew, was incarcerated for a lengthy period. At the 18 month review hearing, the court terminated the fathers' services. The court later established a guardianship for the girls with Maurice's mother and retained jurisdiction. Two years later, the court returned Adrianna and M.G. to mother's custody. At the time, mother had two more children, Maurice, Jr. and Q.G. The family received family maintenance services and jurisdiction was later terminated. Thereafter, all four children were once again detained due to allegations of abuse by mother. At the time, Maurice was in jail; Andrew remained incarcerated. The county agency recommended that family reunification services be denied pursuant to WIC 361.5, subdivisions (b) and (e)(1). The juvenile court ruled that it was unclear whether the WIC 361.5 bypass provisions applied to a noncustodial parent who sought placement under WIC 361.2. Over the objection of the children and the county agency, the court ordered the agency to provide services both to Maurice and to Andrew. Children and county agency appealed.

Affirmed in part and reversed in part. When a child has been removed from the custody of his or her parents under WIC 361(c), if there is a noncustodial parent that desires to assume custody of the child, the court must determine whether that noncustodial parent should

assume custody under WIC 361.2. If the court orders the noncustodial parent to assume custody, WIC 361.2(b) governs the grant or denial of reunification services. If the court does not order the noncustodial parent to assume custody, WIC 361.5 governs whether reunification services should be ordered. In other words, WIC 361.2 addresses the court's authority to grant or deny reunification services *only* where a noncustodial parent assumes custody of the child. (PB)

GUARDIAN AD LITEM - PARENTS

In re A.C. – Filed August 22, 2008, Fifth Dist.

Docket No. F054677

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F054677.DOC>

Two children were detained in 2003 due to neglect by mother. Father was institutionalized under a conservatorship. The juvenile court appointed a GAL for him. He was denied services under WIC 361.5(c)(1). The children reunified with mother. In 2006, the children were redetained. Father was no longer institutionalized, although he was still under a conservatorship. He appeared in the dependency case, and the court appointed counsel for him, but not a GAL. He was again denied services, and his parental rights were eventually terminated. Father appealed.

Affirmed. It was error under Civil Code 372 not to either appoint a GAL for father, or order the conservator to serve as his GAL. However, this error was not a denial of due process because father received notice, appeared at numerous hearings, and was represented by counsel. The error was harmless because father was gravely disabled and unable to care for the children. (MM).

ICWA

Justin L. et al v. Superior Court – filed August 14, 2008, Second Dist., Div. Three

Docket No. B206462

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B206462.DOC>

Three parents of two children filed petitions for extraordinary writ review challenging various orders made by the juvenile court after they were denied reunification services and a 366.26 hearing was set. The juvenile court had ordered the department to notify the appropriate Indian tribes pursuant to the federal Indian Child Welfare Act. The department conceded that it issued no notices according to the requirements of the ICWA. In addition, the juvenile court had given no indication that the department had attempted to mitigate the damage that it caused in failing to attend to the ICWA's dictates by sending notices while the proceeding was pending.

Petitions granted in part and denied in part. The appellate court published this opinion to call attention to the persistent failure of the juvenile court and the department to fulfill their obligation under ICWA. The appellate court stated they are "growing weary" of appeals in which the only error is the department's failure to comply with ICWA. Remand for the

limited purpose of the ICWA compliance is too common. And while ICWA's requirements are not new, the prevalence of inadequate notice remains disturbingly high. The petitions for extraordinary writ review was granted solely for the purpose of the ensuring compliance with ICWA; the petitions were denied in all other respects. (JC)

UCCJEA

In re Aaron D.--Filed August 19, 2008, Fourth Dist., Div. Two

Docket No: EO44453

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/E044453.DOC>

Mother and stepfather and mother's two children moved to California from Texas in December 2005. In January 2006, San Bernardino county detained the children when one of them was seen in emergency room for an eye infection and hospital workers discovered suspicious bruises. Mother advised county workers that she was returning to Texas. The jurisdiction/disposition report noted that mother and father had a case in family court in Texas to determine custody. In March 2006, the juvenile court declared the children dependents pursuant to WIC 300, subdivisions (a) and (b), and the children were placed in foster care. Mother and father were granted reunification services.

At the contested 12-month review hearing, the juvenile court terminated family reunification services and set a WIC 366.26 hearing. Mother filed a Rule 8.450 writ petition, which was denied by the court of appeal. Mother's parental rights were terminated at the section 366.26 hearing, and she appealed, on the grounds California lacked jurisdiction over the case under the UCCJEA.

Affirmed with directions. Under the UCCJEA, the court juvenile court must determine the child's "home state" prior to making custody orders. In this case, the home state was Texas, as the children were detained only one month after they arrived in California. Once Texas exercised jurisdiction over the children via commencement of a child custody proceeding, California could not exercise jurisdiction unless Texas had determined California was a more appropriate forum. California had jurisdiction to enter a temporary emergency order, but such an order must be for a specified time, solely in order to allow the county agency time to communicate with Texas regarding which forum was the appropriate forum to exercise permanent jurisdiction. In this case, California's temporary jurisdiction never ripened into permanent jurisdiction. Furthermore, the juvenile court should have contacted the Texas court immediately after being informed that custody proceedings were pending in Texas, but certainly before making jurisdiction findings. Consequently, the juvenile court did not have jurisdiction under the UCCJEA and all orders from the jurisdictional order on were subject to reversal. The juvenile court is therefore directed to communicate with the Texas court to determine whether it is declining or retaining jurisdiction. If it declines jurisdiction, all orders are affirmed. If the Texas court retains jurisdiction, the California jurisdictional orders and all subsequent orders are reversed. (PB)

WIC 366.22; SUBSTANTIAL RISK OF DETRIMENT FINDING

In re Yvonne W.- filed July 28, 2008 and published August 14, 2008, Fourth Dist., Div. 1
Docket No. D052204

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D052204.DOC>

The juvenile court sustained the WIC 300 petition based on mother's drug use and drug related arrest. During the first six months of reunification, mother participated in all her programs, made progress in therapy, and progressed to overnight and weekend visits. She also gave birth to a baby boy who was not detained. At the 12-month review, although the mother had made substantial progress with her case plan, the court continued services to the 18-month review because mother was having difficulty finding housing, and Yvonne still felt a great deal of rage towards mother and was exhibiting behavioral and emotional issues. At the 18-month review, despite mother's substantial compliance, continued sobriety, and appropriate housing, the juvenile court found a substantial risk of detriment and placed Yvonne in a Planned Permanent Living Arrangement. Mother appealed.

Reversed. At the 18-month review, WIC 366.22(a) requires the juvenile court to return the child to the parent's custody unless it determines, by a preponderance of evidence, that return would create a substantial risk of detriment to the child's physical or emotional well-being. Here, the mother completed her case plan and benefited from the services, was sober for more than a year and committed to her sobriety, made changes in her life in her children's best interest, had acquired knowledge of positive parenting and was able to show empathy, and had stable and appropriate housing at a long-term shelter where she was safely parenting her son. Thus, it was error for the court to not return Yvonne because of mother's housing situation and Yvonne's unhappiness about living in a shelter when there was no evidence to show Yvonne would be at substantial risk of detriment if returned to her mother at the shelter. Also, although the agency's concerns that before return the mother needed to develop a supervision plan for Yvonne, become organized to actively participate in her life, and the IEP needed to be completed address Yvonne's best interest, they do not show that return would create a substantial risk of detriment under WIC 366.22(a). Further, whether or not conjoint therapy would benefit the parent-child relationship is not a proper inquiry at the 18-month review. The appropriate way to address these deficiencies would be to return Yvonne and order family maintenance services. (SA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-32 New Transitional Independent Living Plan (TILP) Agreement for Foster Youth

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0832NewTILP.doc>

Effective immediately, a new version of the Transitional Independent Living Plan (TILP) has been created. CSWs are to begin using the new TILP document, which contains a one-page instruction sheet and a one page core plan/agreement that outlines up to four achievable goals, activities to support the goals, responsible parties for the activities, planned completion dates and indicators of progress toward reaching goals. The new TILP is to be created in collaboration with the youth, the caregiver, and/or other dedicated adult(s) in the youth's life. (SA)

08-34 2008 Back-To-School Clothing Allowance (BTSCA)

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI08342008BacktoSchoolClothing.doc>

This FYI is to notify staff that August 15, 2008 at 3:00 pm will be the last day to update CWS/CMS in order for a foster child to be included or excluded in the automatic Back-to-School Clothing Allowance (BTSCA) process. On August 18, 2008, the automatic BTSCA warrants will be issued. (SA)

Procedural Guide:

0070-538.10 Assessment of Parental Absence

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007053810v0808.doc>

This procedural guide lays out the procedures for DCFS to follow when a referral is received for a child that has been left without any provision for support because the parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left with is unwilling or unable to provide care or support for the child; or the whereabouts of the parent is unknown and reasonable efforts to locate the parent have been unsuccessful; or the parent failed to adequately supervise or protect the child from the conduct of a custodian with whom the parent left the child. (SA)

0080-095.10 (REV) Youth Development: Transitional Independent Living Planning

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050510TILPv0808.doc>

This procedural guide was updated with the revised TILP document that CSWs must complete and instructions on how to complete the document. Also, all references to Early Step Emancipation Program (ESTEP) have been replaced with Early Youth Development Services Program information. (SA)

0080-507.22 Permanency Partners Program (P3)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050722P3v0808.doc>

This procedural guide outlines the goals of P3 as well as the duties/responsibilities of the workers on the case. (SA)

0100-510.10 (REV) Capacity in a Relative/Nonrelative Extended Family Member/Foster Family Home or FFA Certified Home

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051010Capacityv0808.doc>

This procedural guide was revised to add DCFS's policies and guidelines for placing children in Foster Family Agency certified homes. (SA)

0100-520.36 (REV) Providing Ongoing Services to a Kinship Guardianship Assistance Payment (KIN-GAP) Program Case

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052036KGv0808.doc>

This procedural guide was revised to remove most of the instructions on changing KIN-GAP legal guardianship to adoption and instead now provides a reference to Procedural Guide 0300-503.99 "Change of Permanent Plan From Legal Guardianship/Kin-Gap to Adoption." It was also updated with the procedures for re-opening a case. (SA)

0100-525.10 (REV) Interstate Compact On the Placement of Children (ICPC)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052510ICPCv0808.doc>

This procedural guide was updated to notify staff that whenever an out-of-state group home is being considered as a placement, certification by California Department of Social Service is required to comply with the licensure standards required for group homes in California. This procedural guide was also updated to notify staff that The Safe and Timely Interstate Placement of Foster Children Act of 2006 requires that that states complete, report, and return the results of a home study within 60 days from the date the request is received and also that the ICPC Coordinator for each state will be responsible for establishing tracking logs to track the processing time for home study requests. (SA)

0200-508.14 (REV) Accepting the Statement of Understanding and Relinquishment Documents

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050814v0808.doc>

This procedural guide was revised to inform DCFS staff that a copy of the child's birth certificate is required in order to take a relinquishment and was also updated to reflect current practice. (SA)

0300-503.41 WIC 388 Petitions: Response Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050341v0808.doc>

This procedural guide provides instructions to the dependency investigator / case carrying social worker and the supervising social worker on preparing the court report when a WIC 388 petition is filed to terminate a legal guardianship. This procedural guide is applicable to

cases where legal guardianship has been granted and subsequently a WIC 388 petition has been filed to terminate that legal guardianship; to request visits between parents or siblings and the child; due to the legal guardian's request to move out of state; because the legal guardian wants to adopt the child; or the parent(s) are asking to reunify with the child.

0300-503.99 (REV) Change of Permanent Plan From Legal Guardianship/Kin-Gap to Adoption

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050399LGAdptv0808.doc>

This procedural guide was updated with the procedure for changing KIN-GAP to adoption, including the procedure for ASFA completion, filing the WIC 388 petition and responses, completing the Concurrent Planning Assessment, and the process for reopening the dependency case. (SA)

0300-509.00 Identification of Dependent Children With Concurrent Informal Juvenile And Traffic Court (IJTC) Involvement

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050900IJTCv0808.doc>

This procedural guide includes procedures to identify foster children who have had contact with IJTC to determine what if any services are necessary to prevent the child's further involvement with the juvenile justice system. In addition, it outlines the duties and procedures for the Dependency Court, Informal Juvenile Traffic Court, and the attorneys representing the foster child to follow when the child receives a citation. (SA)

0600-508.00 (REV) Foster Youth Substance Abuse Services

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050800FosteYouthSubstanceAbuseServicesv0808.doc>

This procedural guide was revised to reflect the expansion of the FYSAS program to Departments 411, 417, and 420. In addition, the procedural guide was updated to inform staff that DCFS Juvenile Court Services staff will notify the CSW when the court refers a child to FYSAS. (SA)

1200-500.90 (REV) Model Case Format (MCF)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050090MCFv0808.doc>

This procedural guide, which explains to DCFS staff the procedures for keeping a hard copy of case records, was updated with the creation of an ICWA folder. (SA)