



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

Vol. 4, No. 3 February 14, 2007

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

© 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.

NEW DEPENDENCY CASE LAW

ADVISEMENT OF WRIT REQUIREMENT; WIC § 366.26(1)(3)(A)

Jennifer T. v. Superior Court – filed January 24, 2008, Second Dist., Div. Three
Docket No. B197412

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B197412.DOC>

Mother filed a notice of appeal purporting to appeal from an order terminating reunification services and setting a WIC 366.26 hearing. She argued she may challenge the 366.26 referral order despite her failure to file for writ relief because the juvenile court failed to properly advise her of her writ rights when it terminated reunification services. The minute order for the hearing contained a recital that “the parties are advised of writ procedures in open court,” but the reporter’s transcripts established that the juvenile court failed to orally advise mother of her writ rights. When the juvenile court terminates reunification services and orders a hearing under section 366.26, the court must orally advise all parties present that if the party wishes to preserve any right to review on appeal of the order setting the 366.26 hearing, the party is required to seek an extraordinary writ. (§ 366.26(1)(3)(A), California Rules of Court, rule 5.600(b)) The appellate court acknowledged *In re Merrick V.* (2004) 122 Cal.App.4th 235, which held that the juvenile court’s lack of advisement of the writ requirement allows the party to appeal the setting of the 366.26 hearing. However, the appellate court stated that the right to appeal is purely statutory and an appellate court cannot confer the right to appeal

as a remedy for the juvenile court's failure to advise a party of the writ requirement. Instead, this court found good cause existed for mother's failure to file a timely writ petition for the setting order in accordance with rule 5.600 and construed the purported appeal as a petition for writ of mandate. Petition denied. (JC)

JURISDICTION; WIC 300(a), (d).

In re Maria T., filed 1/28/08, Second Dist., Division Eight
Docket No: B198361

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B198361.DOC>

Two children aged 8 and 3 were detained because the 8-year-old reported that mother's boyfriend tried to molest her, and when she told mother, mother accused her of lying and said she would never see her father again if she told anyone. Both children also reported that mother hit them with a belt, leaving bruises. Juvenile court sustained petition under WIC 300(a), (b), (d), and (j), and placed children with father. Mother appealed. Affirmed. WIC 300(a) is not unconstitutionally vague. The meaning of "serious physical harm" is clear enough for parents to understand what injuries fall within the statute. There was sufficient evidence to support the sex abuse allegation, and the allegation that mother's conduct caused a risk of serious harm. There was sufficient evidence to support the dispositional order placing the children with father because the children could not safely remain with mother. (MM)

NONCUSTODIAL PARENTS; REASONABLE EFFORTS

In re G.S.R., filed Jan. 8, 2008, ordered published February 7, 2008; Second District, Division Eight
Docket No: B197000

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B197000.DOC>

Two children were detained from mother after her arrest for having sex with a minor. They were placed with paternal grandmother and paternal uncle. Father wanted the children to live with him, but lacked adequate housing. He admitted that he had used drugs and alcohol in the past, but stated he had been sober for several years. After mediation, the court sustained the petition as amended against mother. There were no allegations against father. The court gave father unmonitored visitation and ordered him to participate in AA. Father visited the children frequently and attended some AA meetings. He was unable to save enough money to get better housing. At the 12-month hearing he requested that the children be returned to him, and said he planned to move into paternal grandmother's home. The court denied this request because it would jeopardize the grandmother's funding, and father was unemployed at the time. The court terminated reunification services and set a WIC 366.26 hearing. At the 366.26 hearing,

father's and the children's attorneys pointed out that father was nonoffending, and the county agency had never filed a WIC 342 petition concerning father. The court terminated parental rights on the basis of its findings at prior hearings that return to father would be detrimental to the children due to his lack of adequate housing and failure to attend all the required AA meetings. Father appealed.

Reversed. Due process requires a finding of parental unfitness by clear and convincing evidence to terminate parental rights. No such finding was ever made in this case. Father was a nonoffending noncustodial parent. The only reason father did not get custody was his lack of suitable housing, but the county agency made no effort to help him find affordable housing, and did not allow him to move into the grandmother's home. Poverty alone is not a basis for dependency jurisdiction. Remanded for a hearing on whether, in light of current facts, there is a sufficient basis for jurisdiction over the children [and remanded for ICWA compliance]. If the court takes jurisdiction, then the county agency must provide reasonable services to father, including housing assistance. (MM).

PATERNITY

In re J.L., filed 2/1/08, First District, Division One
Docket No. A117045

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A117045.DOC>

When J.L. was born, his mother and Adrian L. executed a voluntary declaration of paternity, and Adrian L.'s name was put on J.L.'s birth certificate. J.L. lived with his mother and Adrian L. for one year, but then was abandoned when his mother and Adrian went to Mexico. A dependency petition was filed. Two weeks later, Christopher W. appeared and told the juvenile court that he might be J.L.'s father. He had not asserted his paternity claim earlier because mother had insisted that J.L. was not his child, and Adrian had threatened and harassed him. A paternity test confirmed that Christopher was J.L.'s biological father, and the court granted him presumed father status. He began visiting J.L. Adrian L. and mother returned, and Adrian was arrested for kidnapping based on mother's statement that he forced her to go to Mexico and evidence of prior domestic violence. At the dispositional hearing, the juvenile court was informed for the first time of Adrian's paternity declaration. The juvenile court granted Christopher's motion to set aside Adrian's paternity declaration. Adrian appealed. Affirmed.

Family Code § 7575 provides that a motion to set aside a voluntary declaration of paternity may be filed within the first two years after the child's birth, based on proof that the man who signed the declaration is not the biological father. Adrian argues that § 7575 only allows a child support agency, the mother, or the man who signed the declaration to file the motion. But the statute also says that the motion may be filed "in an action to establish an order for child custody..." and this part of the statute does not restrict who may file the motion. The dependency case was an action to establish a custody order for J.L., so Christopher had standing to ask the juvenile court to set aside

Adrian's paternity declaration. Moreover, Christopher was a Kelsey S. father, so it would be unconstitutional to deny him standing to contest J.L.'s paternity. (MM)

PRIOR REMOVAL FROM A RELATIVE PLACEMENT; WIC 361.3

In re Antonio G. - filed December 28, 2007, Fourth Dist., Div. 1

Docket No. D051079

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D051079.DOC>

Children were detained from mother and placed with grandmother. Subsequently, agency filed a WIC 387 petition alleging grandmother allowed mother to have unsupervised visits with the children, left them unsupervised in the home, and that her home could no longer be approved because of licensing requirement violations. Although the agency did not serve grandmother with the petition and she did not attend the hearing, the court sustained the petition and removed the children. When the new placement failed, grandmother filed a WIC 388 petition requesting placement. After a hearing, the court denied grandmother's petition and ordered the children placed in foster care. Grandmother appealed, contending that the agency violated WIC 361.3 by not investigating and evaluating her as a placement option after the children were removed from their placement and that the juvenile court erred by not applying the criteria listed in WIC 361.3(a) to her placement request.

Reversed and remanded. That a child was previously removed from a relative under WIC 387 does not necessarily mean that under WIC 361.3(d) the relative is unsuitable for future placement. To hold otherwise would preclude any relative from whom a child was removed for reasons unrelated to his/her appropriateness as a caretaker from seeking placement of the child in the future. Here, the court did not find grandmother unsuitable when it removed the children, but held that "the previous disposition is no longer effective for the protection of the children." Because the grandmother was not provided a copy of the WIC 387 petition, was not notified of the hearing, and was not given the opportunity to appear although she had the right to contest the allegations, the petition did not establish she was unsuitable. Further, the linchpin of placement is best interest. Here, it was not necessarily in the children's best interest to deny placement with the grandmother because the children had always lived together but were now in different homes, the possibility of placement together was slim in an out of state placement, and the children did not want to be separated from their mother in California. The agency had a duty to reevaluate the grandmother using the criteria in WIC 361.3(a) and the court had a duty to consider these criteria in assessing her as a placement option. (SA)

REUNIFICATION SERVICES FOR NON PARTIES; WIC 362(c)

In re Silvia R. - filed January 24, 2008, Second Dist., Div. 4

Docket No. B197381

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B197381.DOC>

Silvia was detained because of allegations that her stepfather and adult brother sexually abused her and mother failed to protect. The court sustained the petition, and in addition to ordering reunification services for the parents, it ordered the stepfather and adult sibling to participate in programs. Mother appealed, contending the juvenile court lacked jurisdiction to order stepfather and brother to participate in counseling.

Reversed orders directed at stepfather and brother and affirmed all other orders. When a child is removed from the parent's home, the juvenile court is not authorized by WIC 362(c) to order relatives with whom the child is not placed to participate in any programs. Read together, WIC sections 361.2, 361.5, and 362 limit the persons for whom reunification services may be ordered to parents and guardians, and foster parents and adult relatives with whom the child is placed. However, the court may require as part of the parent's case plan that the parent demonstrate s/he can protect the child. For example, in sexual abuse cases, the court may require the parent to reside separately from the perpetrators or demonstrate that the perpetrators voluntarily participated in counseling and satisfactorily addressed the issues involved for the child to safely reside with them. Thus, the juvenile court did not have jurisdiction to directly order the stepfather and brother to participate in services. (SA)

UCCJEA; REINSTATEMENT OF PARENTAL RIGHTS

In re Angel L., filed Feb. 5, 2008, Second District, Division Eight
Docket No: B198541

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B198541.DOC>

Angel L. and three siblings were detained in 1996 because father brought them to Los Angeles and left them with his elderly mother, and the children were dirty, hungry, and developmentally delayed. Father told the county agency he lived in the desert near the Nevada border. Mother said they lived in Nevada. The county agency contacted a Nevada social worker and judge, who said the parents had mental disabilities and were unable to care for the children, but due to budget constraints Nevada could not provide services or placement in the rural area where parents lived. The juvenile court sustained the petition and placed the children in foster care. The children lived in various foster homes in California and Nevada until 2007. The juvenile court terminated parental rights as to Angel L. in 2007 because her current foster parent wanted to adopt her (this was her 19th placement!). Parents appealed.

Reversed by stipulation. Jurisdiction was proper under the UCCJEA. At the time the petition was filed, the court properly took temporary emergency jurisdiction to protect the children from neglect. The court properly exercised continuing jurisdiction, because the children remained at risk of neglect, and Nevada showed no interest in asserting jurisdiction or providing services. California was the proper forum, as the state most directly interested in the welfare of the children. However, the county agency concedes

that the termination of parental rights should be reversed, because Angel's adoptive placement fell through while the appeal was pending. (MM)

UNPUBLISHED CASES OF INTEREST

RELATIVE PLACEMENT PREFERENCE: WIC §361.3

Michael S. v. Superior Court,--filed January 24, 2008 [unpub.], Second Appellate District, Div. 3

Docket No. B202928

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B202928.DOC>

Michael was detained from minor parents after the emergency room visit revealed numerous rib fractures. A 300 petition was sustained under subdivisions (b) and (e). At disposition, Michael was placed in foster care after the department recommended against placement with paternal grandparents based on the fact that grandparents were "uncooperative" and that they both worked full-time and planned to put baby in day-care. Thereafter, both father and grandparents continued to request, both informally and via section 388 petitions, that Michael be placed with paternal grandparents. During the course of these events, the foster mother moved to Riverside County; the department changed its position and sought to have Michael removed from foster care and placed with paternal grandparents. Minor's counsel sought and obtained a "do not remove" order preventing the department from removing Michael from foster care. At the section 366.22 hearing, the trial court terminated reunification services and set a section 366.26 hearing, and ordered Michael to remain in foster care. Father and paternal grandparents both filed a Rule 8.452 writ petition, seeking to have baby placed with paternal grandparents.

Petition granted. Trial court abused its discretion when it denied the department's request (and grandparents' and father's section 388 petitions) that baby be placed with paternal grandparents after foster mother moved to Riverside. Section 361.3 requires that grandparents be given preferential consideration for placement up until disposition and after disposition if a new placement becomes necessary. Also, the trial judge had exhibited bias against grandparents and father in comments from the bench and written decisions. (PB)

SEXUAL ABUSE; WIC § 300(d); 355.1(d)

In re Aileen P. et al – filed January 31, 2008, Second Dist., Div. Four

Docket No. B197441

Link to case: <<http://www.courtinfo.ca.gov/opinions/documents/B197441.DOC>>

Father appealed from jurisdictional findings under WIC section 300, subdivisions (b), (d), and (j) as to his sons but did not contest the findings as to Aileen or her sister. He argued DCFS did not present any evidence, other than the sexual abuse of Aileen, to show there was a substantial risk that the two male children will be abused or neglected. Father admitted that he touched Aileen's vagina, over her clothing, one time when he had been drinking with some friends. Aileen initially said that Jessica and Rudy were asleep in the room when the incident happened and later said that the incidents occurred while she was asleep alone in her room. The other children told the social worker that they never witnessed father abusing Aileen, nor had father touched or sexually abused them. The juvenile court found there was a substantial risk to the boys because the incident took place at night while Aileen was sleeping in the bedroom she shared with siblings when father had been drinking.

Reversed. Two Divisions of this court have come to conflicting conclusions regarding whether a parent's sexual abuse of a daughter is sufficient by itself to show that a younger son is at substantial risk of sexual abuse. Division Two concluded it was not sufficient in *In re Rubisela E.* (2000) 85 Cal.App.4th 177, while Division Three held it was sufficient in *In re P.A.* (2006) 144 Cal.App.4th 1339). The appellate court disagreed with Division Three stating that it found support for its conclusion in WIC section 355.1(d), despite the fact that the statute and presumption did not apply because the father in *In re P.A.* had not been found in a prior dependency hearing to have committed an act of sexual abuse. The appellate court stated that when no prior finding of sexual abuse has been made, the presumption does not apply, and the burden is on DCFS to show there is a substantial risk that the children will be abused. DCFS did not meet its burden in this case. (JC)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-05 Establishing Legal Residency Prior to Adoption Finalization
 And/Or Termination of Court Jurisdiction On Other Permanent
 Plans

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0805LegalResidencyPriorToFinalizationAdptRev.doc>

This FYI is to remind staff 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 Permanent Resident Card (i.e.- green card.) (SA)

08-07 Foster Youth Substance Abuse Services Pilot Reminder

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0807SubstanceAbuse.doc>

This FYI reminds CSWs to follow the protocols set forth in FYI 07-07 for foster children using drugs. This includes notifying the court as soon as possible via a walk-on report with a copy of the "Alcohol and Other Drug (AOD) Tool" attached or attaching the information into the next scheduled hearing report with a copy of the AOD Tool, ensuring the child is present at follow-up hearings or reporting to the court why the s/he will not be present, assisting the child with transportation when needed, and providing the "Adolescent Intervention, Treatment, Recovery, and Prevention (AITRP) Youth Progress Report" to the court at least 48 hours before the hearing.

08-08 Process Service of Termination of Parental Rights (WIC 366.26)
Hearing Notices

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0808TPRTermContractServices.doc>

This FYI advises DCFS staff that effective February 29, 2008, DCFS will terminate its contracted services for process service of WIC 366.26 hearing notices. Personal delivery of the TPR notices will continue as an internal DCFS process handled by each DCFS Regional Office as outlined in Procedural Guide 0300-306.05, Notice of Hearing for Juvenile Court Proceedings, dated 01/23/08. (SA)

Procedural Guides:

0070-560.05 (REV) Joint Response Referral

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007056005jointrespv0108.doc>

This procedural guide modified the criteria for a Joint Response referral, which requires a consultation between the CSW, PHN, and SCSW for referrals involving children with suspected or known medical or developmental conditions and allegations of severe

neglect, by eliminating the requirement that any referral with a child age 0-36 months will be considered a Joint Response referral. (SA)

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

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030605v0108.doc>

This procedural guide was updated to indicate that the detaining CSW is responsible for noticing parties for the Initial Hearing and that the CSW will only initiate written notice if s/he was unable to provide oral notice. This procedural guide was also updated to reflect that as of January 1, 2008, form ICWA-030 "Notice of Child Custody Proceeding for Indian Child" has replaced form JV-135. (SA)

0900-523.10 (REV) Supplemental Security Income (SSI) and/or Social Security Benefits for Children In Care

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090052310v0108.doc>

This procedural guide was updated to reflect the passage of WIC 13757, which requires the social worker to screen foster youth nearing emancipation for SSI eligibility. (SA)

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

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050080v0108.doc>

This procedural guide was updated to reflect that DCFS 5122 (DCFS' joint referral notice process developed jointly by DCFS and DPSS to link children, families, and individuals in need with appropriate services such as CalWORKS, Food Stamps, General Relief, and/or Medi-Cal) is now on DCFS' database for CSWs to utilize. (SA)

0050-503.75 (REV) Child Protection Hotline (CPH): Request for Emergency Medical Consent

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050375v0108v2.doc>

This procedural guide was updated to reflect current California Rules of Court that psychotropic medication can be administered to a dependent child without court authorization in an emergency situation but court authorization must be sought no more than two court days after the emergency administration of the psychotropic medication. (SA)

0010-510.40 Teen Parents In Foster Care

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051040TeenParentv0108.doc>

This procedural guide instructs CSWs on how to work with teen parents who are under DCFS supervision and their children who may or may not be dependents, including, information on services and placement. (SA)

0600-507.10 (REV) Youth Development: Reproductive Health

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050710YouthDevelopmentReproductiveHealthv0108.doc>

This procedural guide has been revised to give instruction regarding pregnancy prevention and avoiding sexually transmitted infections including HIV and AIDS; managing unintended pregnancy (parenting, adoption, termination of pregnancy); and safe pregnancy and healthy baby. Reference to Safe Surrender, Reproductive Health and Parenting Resources for Teens in L. A. County, and the role of the PHN in Joint Referral and Collaborative Planning has been added. (SA)

E090-0507 (REV) Teen Parents in Foster Care (Formerly Minor Mother Placement With an Infant Supplement)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E090/E0900570TeenParentv0108.doc>

This procedural guide has been updated to advise staff of higher rates and changes in foster placements for teen parents to reinforce current policy to place children with their teen parents whenever possible. These changes create a new placement category called Whole Family Foster Homes (WFFH) in which caregivers are specially trained and certified to assist the teen parent in developing skills necessary to provide a safe, stable and permanent home for their child, and also create a Shared Responsibility Plan (SRP) to help develop the parent-child bond, assist the teen parent in his/her transition to independence, and create a successful, supportive and nurturing placement for both the teen and the child. (SA)

1200-501.30 (REV) Travel Policy, Travel Advance, And Expense Reimbursement

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050130TravelV0208.doc>

This procedural guide has been revised to reflect adjusted rates for reimbursement of travel expenses as specified by the Auditor Controller on January 24, 2008. (SA)

500-507.10 (REV) Confidentiality Protocols For Telecommuting, Users of Portable Computing Devices and Mobile Workers

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0500/050050710v0208.doc>

This procedural guide has been revised to include instructions for DCFS staff to use portable computing devices while telecommuting. (SA)

0300-503.25 (REV) Removing a Child From the Home of a Prospective Adoptive Parent(s)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050325v0208.doc>

This procedural guide has been updated to reflect the new WIC 366.26(c)(1)(A) exception to adoption; updated with instructions for procedures related to concurrent planning redesign; and updated to include the use of new Judicial Council Forms, including JV-321 Request for Prospective Adoptive Parent Designation, JV-322 Confidential Information-Prospective Adoptive Parent, JV-323 Notice of Intent to Remove Child, JV-325 Objection to Removal, JV-324 Notice of Emergency Removal. (SA)

0070-560.05 Joint Response Referral

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007056005jointrespv0208.doc>

This procedural guide has been revised again to add that in certain situations the SCSW must be part of the joint consultation between the CSW and PHN, and also that if there is a difference of opinion between the CSW and PHN, the SCSW and PHNS will assist in making the decision. (SA)

