



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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Written by: Martha Matthews (MM), Jenny Cheung (JC), Sophia Ali (SA), and Patricia Bell (PB)

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NEW DEPENDENCY CASE LAW

EDUCATION CODE: Compulsory Education Laws

In re Rachel L.,--filed February 28, 2008, Second District, Div. 3

Docket No. B192878

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B192878.DOC>

County agency filed a dependency petition alleging physical abuse by father and failure to protect from sexual abuse. During the investigation, county agency discovered that all children in family had been home-schooled by mother, who did not hold a teaching credential. As part of disposition, children's counsel requested that children be required to enroll in public or private school, and actually attend such a school. Juvenile court denied the request, on the grounds that parents had a constitutional right to school their children in their own home. Children's counsel petitioned for extraordinary relief.

Relief granted. California Education Code requires full-time public school education for persons between the age of six and eighteen. Exemptions apply where children attend a private full-time day school or are instructed by a tutor who holds a valid state teaching credential. California's compulsory education provisions have previously been found constitutional. Parents' claim that they are entitled to home school their children because of religious beliefs is not supported by sufficiently specific factual representations. Because of the family's long history in dependency court, children in this case are ordered to enroll in a public or private school, and not permitted to utilize the private tutor exemption. (PB)

FIFTH AMENDMENT PRIVILEGE, WIC 355.1

In re Brenda M. – Filed Feb. 1, 2008, ordered published March 3, 2008, Fourth Dist., Division Three
Docket No: G038857
Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G038857.DOC>

Two children were detained due to sexual abuse of older child. Father was arrested and charged for the sexual abuse. At the jurisdictional hearing father refused to testify, arguing that WIC 355.1 did not protect him from derivative use of his testimony in the criminal case. The juvenile court sanctioned father by not allowing him to present any evidence or cross-examine any witnesses. The only evidence offered at the hearing was the county agency's reports. Father's attorney said she would have cross-examined the preparer of the reports if allowed to do so. The court sustained the petition. Father appealed. Reversed. Under *In re Mark A. (2007), 156 Cal.App.4th 1124*, the juvenile court erred by ordering father to testify after he invoked his Fifth Amendment privilege, and by imposing an evidentiary sanction for his refusal to testify. The error was not harmless beyond a reasonable doubt because the only evidence supporting jurisdiction was the agency's reports, and there is no way to tell whether cross-examination would have damaged the credibility of this evidence. (MM).

ICWA- DUTY OF INQUIRY

In re N.E.- filed February 29, 2008, Fourth Dist., Div. 3
Docket No. G039168
Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G039168.DOC>

Mother informed the juvenile court she might have Indian heritage but stated father did not. The agency noticed the Bureau of Indian Affairs (BIA) and tribe, listing the father as only alleged. An ICWA worker sent father a letter in jail asking him to contact the agency but father did not contact him. Another social worker that contacted father in jail failed to ask if he had Indian ancestry. However, father's counsel stipulated that ICWA notices had been given to the BIA and identified tribe, and that ICWA did not apply. The court eventually terminated parental rights. Father appealed.

Affirmed. Although it is not clear that the agency or juvenile court complied with their duty to inquire if father had Indian ancestry under WIC 224.3(a) and California Rules of Court 5.481(a), for the juvenile court's order to be reversed, the father must show he was prejudiced by that order. Here, as father did not indicate he has Indian heritage, he has not shown prejudice. (SA)



ICWA -- NOTICE TO PARENTS

In re Miracle M., filed Feb. 14, 2008, ordered published March 4, 2008

Docket Nos. B200319 and B200756, consolidated

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B200319.DOC>

Two children were detained due to parents' drug use and mental health problems. At detention hearing, mother stated she had Indian heritage but did not know what tribe, and a paternal aunt stated that father had Cherokee ancestry. ICWA notices were sent to the BIA and three Cherokee tribes, but the notice form (JV-135) was not served on parents. After receiving responses from the tribes, the court found that ICWA did not apply. Parents did not object to the failure to mail them the JV-135 form. Parents did not comply with the case plan, and the court terminated reunification services, set a WIC 366.26 hearing, and terminated parental rights. Mother appealed. Affirmed in part; limited remand for ICWA compliance. The county agency conceded the need for a limited reversal because the ICWA notices listed only one of the two children's names. As to the second child, the parents waived the issue of the county's failure to serve them with the JV-135 form by not objecting. Moreover, any error was harmless because mother did not show how getting a copy of the JV-135 form would have changed the result. (MM)

UNPUBLISHED CASES

VISITATION; WIC 366.26(c)(1)(B)(i) [formerly (c)(1)(A)]

In re Justin C... – filed Feb. 29, 2008, Second Dist., Division One

Docket No. B199961

Link to case:

Mother left two-year-old child with great-aunt. A month later, great-aunt called the county agency. Agency filed a dependency petition. Juvenile court ordered the child detained in the great-aunt's home, and ordered reunification services for mother if she could be located. The agency filed a declaration of due diligence. At the six-month hearing the agency stated that mother still had not made contact. The court terminated services and set a WIC 366.26 hearing. Mother appeared at the WIC 366.26 hearing and counsel was appointed. The agency did not recommend termination of parental rights because the great-aunt's home study was still pending, but the court stated it would go forward with terminating parental rights. Mother's attorney requested a contested hearing. Mother said she had tried to call the social worker many times, but the great-aunt and the social worker both told her there was a restraining order in place and she could not visit or contact her child. The juvenile court denied a contested hearing and terminated parental rights. Mother appealed.

Reversed. Denial of visitation virtually assures the erosion of any parent-child relationship, and makes it impossible for a parent to establish the WIC 366.26(c)(1)(B)(i) exception. The juvenile court should have set a contested hearing. If mother proved her claim that she had

been denied visitation, the court should have given her a chance to establish the parent-child relationship exception before terminating her parental rights. (MM).

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-11 Establishing Candidacy for Foster Care in Voluntary Family Maintenance Case Plans

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0811CandidatesFosterCareCasePlan.doc>

This FYI is to advise staff that instructions for writing case plans where voluntary family maintenance services will be provided are being changed. (SA)

08-12 DCFS Countywide Alcohol And Drug Testing Services

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0812DrugTesting.doc>

This FYI is to advise staff to seek alternative resources for alcohol and drug testing services for clients, before referring clients to Pacific Toxicology. There are a number of substance abuse treatment programs/options available to clients that also provide testing. Due to ongoing financial cuts of the DCFS Alcohol and Drug Testing Program, these programs/options should be considered **prior** to enrollment in the DCFS Alcohol and Drug Testing Program. (SA)

Procedural Guides:

0300-503.80 (REV) Vacation Requests

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050380V0208.doc>

This procedural guide has been revised to include instructions on how to seek a court order to obtain a passport for a child/youth. (SA)

1200-501.40 Obtaining A Passport For A Child/Youth Under DCFS Supervision

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050140Passportv0208.doc>

This procedural guide provides procedures for children to obtain passports to ensure they can travel to and from the United States. (SA)

0300-318.05 (REV) Obtaining Restraining Orders

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050140Passportv0208.doc>

This procedural guide has been revised to conform with FYI 07-43 “Use of Restraining Orders in Cases Of Domestic Violence,” including what a restraining order is, the legal requirements that must be met to obtain one, and an explanation of when restraining orders would be helpful.

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/1200/12005000v0308.doc>

This procedural guide revised its Departmental Values statement, which states “DCFS is committed to ensuring that every child, birth family, resource/foster parent, or adoptive parent is served regardless of race, color, religion, sex, national origin, political affiliation, handicap, age, marital status, sexual orientation,” to include “gender identity.” (SA)

0050-501.35 (REV) Child Abuse And Neglect Reporting Act (CANRA):
Reporting To Licensing Agencies

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050135V0308.doc>

This procedural guide was updated to inform staff that Penal Code sections 11165.5 and 11166 amended the terms “child abuse or neglect” to include death inflicted by other than accidental means, and to also inform staff that substantial risk as an allegation has been removed. (SA)