Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

WIC 366.26(c)(1)(B)(i) EXCEPTION

In re A.G.--Filed March 28, 2008, Fifth Dist.
Docket No: F054172
Link to Case: http://www.courtinfo.ca.gov/opinions/documents/F054172.DOC

Seven year old A. and infant M. were declared dependants based on mother's drug abuse. After mother made minimal progress in reunification, the court terminated services in June 2006 and set a section 366.26 hearing. The children were placed with maternal grandparents who wanted to adopt; thereafter, the section 366.26 hearing was continued numerous times pursuant to various stipulations. By mid-May 2007 the grandparents had changed their mind about adoption, and the county's adoption specialist ordered placement in a new prospective adoptive home. Mother filed a section 388 petition to coincide with the section 366.26 hearing, scheduled in June 2007. On that date, after mother's request for a continuance was denied, mother withdrew her 388 petition, stating that she would re-file it sometime in the future. The court went ahead with the 366.26 hearing, and found that termination of parental rights would not be detrimental to the children. This finding was not appealed. At a subsequent, further section 366.26 hearing, mother sought to present testimony relevant to a section 366.26(c)(1)(B)(i) exception that she had maintained regular visitation and that her children, especially the older child, would benefit from the continued parent/child relationship. Mother had not filed a section 388 petition because there were no new circumstances to allege. The court denied mother the opportunity to present evidence and mother appealed.

Affirmed. The only issue at the further section 366.26 hearing was whether it was likely the children would be adopted. The issue whether termination of parental rights would be detrimental to the children had been previously determined, and the trial court's refusal to re-open that issue did not constitute denial of due process. (PB)

GUARDIAN AD LITEM

In re M.F. – filed March 28, 2008, Third Dist.
Docket No. C056735
Link to case: http://www.courtinfo.ca.gov/opinions/documents/C056735.DOC

Minor mother, C.F., appealed termination of parental rights arguing that the juvenile court erred by failing to appoint her a guardian ad litem until after her reunification services were terminated and the hearing to terminate her parental rights was pending. When C.F. was 14 years old, DCFS filed a petition concerning her 10-month old child alleging that C.F. had been subjected to ongoing sexual abuse by her step-father resulting in the birth of M.F. At the dispositional hearing, the juvenile court placed the child with C.F. However, prior to the six-month review hearing, the social worker reported that C.F. was struggling with depression and was unsure at times whether she wanted to keep the baby. Two days before the six-month review hearing, C.F. ran away with the baby resulting in the filing of a supplemental petition. When the supplemental petition was heard, C.F.'s whereabouts remained unknown. C.F.'s attorney's continuance request was denied, no evidence or argument was presented, and the juvenile court terminated reunification services. C.F. was present for the 366.26 hearing and the juvenile court appointed a guardian ad litem for her.

Reversed. The appellate court found that the failure to appoint a guardian ad litem for C.F. at the commencement of the dependency proceedings was error and that she was prejudiced by it. The appellate court looked to the requirements of the Code of Civil Procedure section 372 for guidance on the issue of appointing guardian ad litems for minor parents in dependency proceedings. While the appellate court recognized that Cal. Rules of Court, Rule 5.662(c) provides that the attorney for the child also serves as the child's guardian ad litem, it stated that an attorney for a parent in dependency proceedings functions in a traditional advocate role requiring meaningful input from the client on procedural and substantive issues. The appellate court found that minor parents (as well as conservatees and individuals determined to be incompetent) are considered legally incapable of providing adequate direction to their counsel and require a guardian ad litem. The appellate court stated that C.F.'s rights were compromised at key hearings as a result of the failure to appoint a guardian ad litem. C.F.'s attorney did not contest any of the findings or orders in this matter and the failure to appoint a guardian ad litem cannot be deemed harmless. (JC)

ICWA

In re H.B.. – filed February 25, 2008, Second Dist., Div. Seven
Docket No. B200606
Link to case: http://www.courtinfo.ca.gov/opinions/documents/B200606.DOC

Mother appealed termination of parental rights arguing that the juvenile court erred in failing to inquire whether the child might have Indian ancestry. H.B., mother's fifth child, was detained after a failed Voluntary Family Maintenance Plan. Mother had extensive departmental intervention for her other children and nothing in the record suggested any of H.B.'s siblings were ever identified as possibly having American Indian ancestry. Mother did not appear at the detention hearing and the juvenile court indicated it would make ICWA inquiries at the subsequent hearing. Mother appeared for the jurisdiction/disposition hearing and the juvenile court did not inquire further about H.B.'s possible American Indian ancestry. The juvenile court denied mother reunification services and subsequent DCFS reports continued to state that ICWA did not apply. The juvenile court never made an ICWA finding at any of the hearings before terminating mother's parental rights and mother never asserted H.B. might have American Indian ancestry.

Affirmed. The appellate court found that the juvenile court erred in failing to ensure compliance with state-imposed ICWA inquiry requirements. Pursuant to California Rules of Court, Rule 5.664 (formerly Rule 1439(d)), both the juvenile court and DCFS have an affirmative duty to inquire whether a dependent child is an Indian child and the parent must be ordered to complete form JV-130, Parental Notification of Indian Status. There is no evidence in this case that the mother was ever asked to complete form JV –130 and the juvenile court failed to make the required inquiry on the record. However, the appellate court stated the error was harmless because mother never asserted H.B. may have American Indian ancestry or suggested she would have said he did had she been required to complete form JV-130. In addition, the appellate court stated that ICWA is not a "get out of jail free" card for parents of non-Indian children looking to avoid a termination order. (JC)

ICWA

In re N.M.- filed March 5, 2008, Second Dist., Div. 8
Docket No. B198837
Link to case: http://www.courtinfo.ca.gov/opinions/documents/B198837.DOC

Parents appealed termination of parental rights. Court of Appeals ordered limited reversal for compliance with ICWA and ordered DCFS to notice the Yaqui and Apache tribes as they were the only tribes mother had named. DCFS noticed those tribes in December 2006. After the remittitur was issued, the juvenile court held a status review hearing and mother named several other tribes she was possibly affiliated with. The court granted several continuances for mother to gather information about possible tribal affiliations and DCFS sent notices to more than 60 different tribes, the Secretary of the Interior, and the Sacramento office of the Bureau of Indian Affairs (BIA). In May 2007, the juvenile court acknowledged all notices had been sent at least 10 days before the hearing and receipt had been confirmed except from four tribes, found that the Yaqui and Apache tribes were properly noticed, found ICWA did not apply, and reinstated the order terminating parental rights. Parents appealed.

Affirmed. Although WIC 224.3(e)(3) allows a tribe and BIA 60 days after receipt of notice to confirm that a child is an Indian child, under WIC 224.2(d) the juvenile court only has to wait 10 days after receipt of notice before setting a hearing to terminate parental rights. Here, the Yaqui tribe and seven out of eight of the Apache tribes indicated the children were not members of or eligible to become members of their tribe and the court reinstituted the termination order after the 60-day notice period had expired as to those tribes, none of the 60 other tribes noticed claimed that the children are members of or are eligible to become members in their tribe although 60 days have now passed since they received notice, the Secretary of the Interior and BIA received notice more than 60 days before the termination order, there is no indication the court had any basis to find ICWA applied, and the juvenile court found that mother's claims of tribal affiliation were not credible. Further, parents' forfeited any claim that the notices were inadequate because they did not object to the adequacy of notice in juvenile court. Finally, in regards to father's claim of ineffective assistance of counsel, there is no reasonable probability that the outcome would have been more favorable to him if his attorney made specific objections to the ICWA notices because there is still no indication the children are Indian children or that any tribe would have responded differently if father's counsel made such objections or the worker sent additional notices. (SA)

PATERNITY; DE FACTO PARENTS

In re Vincent M. – Filed April 4, 2008, second Dist., Div. Five
Docket No: B198078
Link to case: http://www.courtinfo.ca.gov/opinions/documents/B198078.DOC

Vincent M. was declared a dependent shortly after birth because his mother surrendered him at the hospital. The court ordered no family reunification services, set a WIC 366.26 hearing, and placed Vincent in a fost-adopt home. Mother refused to identify the father. At the WIC 366.26 hearing, Dan L. appeared and claimed to be Vincent's father on the basis of prenatal paternity test results. The WIC 366.26 hearing was continued. Further testing showed that Dan L. was not the father. Mother then disclosed that Jorge C. was the father, and that he lived in New York. The county agency gave Jorge C. notice and he appeared at the continued WIC 366.26 hearing. At this time Vincent M. was 8 months old. Jorge C. filed a WIC 388 petition requesting presumed father status, and stated that mother had concealed her pregnancy and the child's birth from him. The juvenile court took the WIC 366.26 hearing off calendar, granted Jorge C. presumed father status after paternity testing showed he was the biological father, and ordered reunification services, monitored visits, and initiation of the ICPC process. Foster/adoptive parents appealed.

Reversed. Foster/adoptive parents have standing to appeal because the juvenile court's order adversely affected their interests as Vincent's de facto parents. Juvenile court erred in granting Jorge C. presumed father status and granting him services, without finding that this was in Vincent's best interests. Jorge C. did not qualify as a presumed father because he had not taken the child into his home. Kelsey S. does not apply where a father comes forward late in a dependency case, after reunification service have been terminated. (The court also noted that Jorge lived with mother a long time, did not use contraception, and made no effort to find out if mother was pregnant after he moved to New York.) Jorge should have been required to prove both changed circumstances *and* that granting him services would be in Vincent's best interests, as required by WIC 388. (J. Armstrong dissented on the grounds that Jorge C. was a Kelsey S. father and should not be deprived of any chance to attain presumed father status by mother's unilateral actions.) (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0050-503.15 (REV) Child Protection Hotline (CPH): Determining Response Times

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050315v0308.doc>
This procedural guide has been revised to include instructions on when a referral is to be flagged as an expedited response referral. Further, in response to All County Letter No. 07-52, the reference to "substantial risk of harm" has been removed. (SA)

0070-547.12 Expedited Response Referrals

Link to Procedure:
<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054712expeditedV0308.doc>
This procedural guide discusses the procedure for handling expedited response referrals. (SA)

0070-547.13 Conducting A Concurrent Investigation With Law Enforcement

Link to Procedure:
<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054713ConcurrentInvestv0308.doc>

This procedural guide encourages CSWs to conduct concurrent assessments with law enforcement officers for initial investigations of child abuse, including investigations without a referral pursuant to WIC 306(a). (SA)

0500-501.30 Disclosures of Health And Mental Health Information to and From County Departments Providing Services to a Child/Youth

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0500/050050130v0308.doc>
This procedural guide informs CSWs that they can provide health and mental health information regarding a dependent child to the Probation Department, the Department of Health Services, or the Department of Mental Health as long as the those departments are legally entitled to that information and are providing treatment or supervision to the child. The information includes routine medical/dental record information, psychological evaluations and mental health information, HIV/AIDS record information, family history, placement history, and treatment plans. CSWs may also request information from the above listed departments. (SA)