



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ADOPTABILITY; ADOPTION ASSESSMENT

In re Valerie W. – Filed April 4, 2008, ordered published April 21, 2008, Fourth Dist.,
Division One
Docket No: D051056

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D051056.DOC>

Two year old Valerie and nine-month-old Gregory were removed from their parents due to drug use, and placed with Vera V., a non-relative extended family member. Family reunification services were terminated and the court set a WIC 366.26 hearing. In its report for the WIC 366.26 hearing, the county agency stated that Gregory had health problems and was very small for his age, but did not include information about the results of a recent brain scan and genetic testing. The report also stated that Valerie had emotional and behavioral problems. The agency's plan was for Vera V. to adopt the children jointly with her adult daughter Juana, who did not live with Vera but helped to care for the children. The court terminated parental rights and designated Vera V. as the prospective adoptive parent. Parents appealed.

Reversed. The agency's assessment failed to include most of the information required under WIC 366.21(i), so there was insufficient evidence to support the court's finding of adoptability. The report failed to provide adequate information about Gregory's medical problems or the level of care he would need, so the court had no basis to make a finding on whether he was likely to be adopted by anyone other than Vera and/or Juana. And when the court's adoptability finding is based solely on a particular family's willingness to adopt, then the court must determine if there is any legal impediment to that adoption. Here, the two

prospective adoptive parents did not live together, and only Vera had an approved home study and a foster care license. There was no evidence that Vera would be willing to adopt the children by herself if joint adoption with Juana were not approved. There was evidence that Valerie was bonded to Juana and her domestic partner¹ as well as to Vera. The legal issue whether a mother and a daughter could adopt jointly was not briefed or considered by the trial court. Remanded for the agency to complete an assessment in compliance with WIC 366.21(i) and for a new WIC 366.26 hearing. (Juana's domestic partner, Andrea K., who apparently was not considered as a prospective adoptive parent, was related to the children in that her adoptive sister F.P. was the children's biological half-sister.)

SECTION 388 HEARINGS

In re Lesly G.--Filed May 1, 2008, Second Dist., Div. 4
Docket No: B202299

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/B202299.DOC>

Five children were declared dependents under WIC 300, subdivision (b) due to substance abuse and domestic violence by both parents. The children were placed in the home of MGM, and by end of reunification period mother was only in partial compliance with the case plan. At the contested 366.22 hearing, the court terminated reunification services and set a WIC 366.26 hearing, which was later continued and set for a contested hearing. On the day of the contested 366.26 hearing, mother filed a section 388 petition. On receipt of the petition, the court issued an order on Judicial Form JV-180. The court checked three boxes on the form. The first checked box stated, "The best interest of the child may be promoted by the requested new order, and either the request states a change of circumstances or the request has been filed for the purpose of asserting a brother or sister relationship with the child," and also stated, "A hearing will be held. . ." The second box gave the date for the hearing. The third box checked stated, "The judge will not hold a hearing. The judge will make a decision based on your request and any other papers files by those listed in Item 8. You and anyone listed in Item 8 may ask for a hearing, which the judge will hold if there is good cause." The clerk issued a notice to mother stating that a hearing was ordered. On the date of the hearing, the court denied the section 388 petition without hearing testimony or argument, and proceeded directly to the section 366.26 hearing. At the 366.26 hearing, mother testified and the court heard argument. At the conclusion of the hearing, the court found by clear and convincing evidence that the children were adoptable and that adoption was the appropriate plan, and terminated mother's parental rights. Mother appealed from the denial of her section 388 petition and the termination of her parental rights.

Reversed in part. Once the juvenile court checked the box on Form JV-180 stating that mother had made out a prima facie case for granting a section 388 petition, the court was obligated by statute to hold a hearing. Although it is not clear what kind of hearing is required, it is clear that in this case the hearing, if any, was inadequate. No testimony was allowed, no documents were admitted and no arguments were heard. The fact that testimony and argument was heard at the section 366.26 hearing is immaterial. The court must first

afford petitioner a fair hearing on the section 388 petition before proceeding to the 366.26 hearing and disposition. (PB)

NON-DEPENDENCY CASES OF INTEREST

ICWA; FAMILY LAW

Erika K. v. Brett D. – Filed April 10, 2008, First Dist., Div. One
Docket No. A116590

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A116590.DOC>

Mother Erika K. and her daughter Cecelia were members of an Indian tribe. Due to financial problems, mother sent Cecelia to live with a family friend, Nicole, for four years. When Erika sought to regain custody of Cecelia, Cecelia refused to return to her home. Erika filed a custody action in family court, and Nicole petitioned to be joined as a party. The family court granted Nicole standing, awarded custody of Cecelia to Nicole, and held that the Cecelia's constitutional right to a stable home prevailed over any claim mother might have under ICWA. Mother appealed.

Affirmed in part; reversed in part and remanded for ICWA compliance. The family court correctly held that custody could be awarded to a nonparent who has assumed the role of a parent for a substantial period of time, upon a finding that giving custody to a parent would be detrimental to the child, under Fam. Code § 3041. The nonparent need not petition for guardianship to be awarded custody under § 3041. However, the family court erred in finding ICWA unconstitutional as applied, without first determining that ICWA would actually require the court to grant custody to mother. ICWA allows placement in a non-Indian home if there is good cause and if certain procedural and evidentiary requirements are met. Remanded for a custody hearing in compliance with ICWA. (MM)

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

For Your Information (FYIs):

08-20 Is Anyone New Residing In the Home

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0820NewPeopleinthhome.doc>

This FYI is to advise staff that at every monthly home visit for children residing in foster homes, small family homes, FFA certified homes and the homes of relatives and non-relative extended family members, they should enquire whether anyone new is living in the home, 14 years or older, and direct them to Live-Scan. (SA)

08-21 Vital Records Requests And Status Tracking Log

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0821VitalRecTrackLog.doc>

This FYI is to advise CSWs that as of 5/1/08, they can track the status of all requests for vital records (ie- birth certificates) made for minors, through the Revenue Enhancement Vital Records tracking logs now available on “LA Kids.”

Procedural Guides:

0070-548.18 (REV) Child Abuse Central Index (CACI) Review Hearings

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054818v0508.doc>

This FYI was revised with the new procedure to follow to challenge DCFS, when individuals claim DCFS incorrectly reported them to the Department of Justice or that their name was listed on the Child Abuse Central Index in error. (SA)