



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA

In re K.P. et al. - filed June 22, 2009, Third Dist.

Docket No: C060327

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/C060327.PDF>

In November 2002, a petition was filed alleging jurisdiction under WIC 300, subdivisions (b) and (c) with respect to children J.P. and K.P. Mother told workers that she was a member of the Colfax/Todd's Valley Consolidated Tribe, a non-federally recognized tribe. At a hearing on a subsequent dependency petition filed in 2007, the juvenile court found that the children were not Indian children within the meaning of the ICWA. Eventually, the juvenile court terminated mother's parental rights as to K.P. and another child. Mother appealed on the grounds that the county agency violated the ICWA by failing to investigate the Colfax/Todd's Valley Tribe's affiliation with federally recognized tribes, and provide notice to those tribes.

Affirmed. Mother's counsel attempted to show the appellate court that a cursory search on the internet suggested that the mother's tribe might be affiliated with federally recognized tribes. However, this information was not presented to the juvenile court, and thus the juvenile court had no “reason to know” that the petition might involve an Indian child. (PB)

JURISDICTION; WIC 300(b)

In re Y.G. - filed June 23, 2009, Second Dist., Div. Four

Docket No. B210847

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/B210847.PDF>

Jocelyn G., then 18 months old, was injured in 2008 while in the care of Angelina T., mother's mother. Mother admitted to police that she had hit Jocelyn in the face, and was arrested for child endangerment. The county filed a petition alleging under subdivision (b) that mother's own child, Y.G., was at risk of similar physical abuse. The trial court found that mother caused the injuries to Jocelyn and sustained the petition on the grounds that Y.G. was at substantial risk of similar abuse. Mother appealed, on the grounds that subdivision (b) does not permit the court to consider mother's conduct with an unrelated child in determining substantial risk.

Affirmed. Section 300, subdivision (b) provides that a court may adjudge a child a dependent if "the child has suffered or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of . . . her parent . . . to adequately supervise or protect the child." Mother argued that subdivision (b) does not apply because the statutory language requires that the risk be created by specific acts of the parent to that specific child. However, according to the appellate court, WIC 355.1, subdivision (b), which provides that evidence that a parent has physically abused another child is admissible in evidence, is consistent with the principle that a parent's past conduct may be probative of current conditions. Furthermore, construing section 300, subdivision (b) to permit a finding of danger to the parent's child based on evidence of conduct with an unrelated child is consistent with the broad purpose of dependency law: to ensure the safety of children. (PB)

PARENTAGE; FAM. CODE §§ 7611(d), due process

In re Jason J. – filed July 9, 2009, Fourth Dist., Div. One
Docket No. D054188

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/dD054188.DOC>

Jason, age one, was detained from his mother due to mother's drug use and physical abuse of Jason by her boyfriend. Mother named Willie S. as Jason's father, and a paternity test confirmed his parentage. The court granted him services, but he refused to participate, saying he did not need services and did not want custody. Willie S. wanted Jason to be returned to mother or placed with relatives. Willie S. and Jason had monitored visits, which went well. Mother did not comply with the case plan, and the court set a WIC 366.26 hearing. Willie then said he wanted custody of Jason, and argued that his parental rights could not be terminated without a finding of unfitness, and that the WIC 366.26(c)(1)(B)(i) exception to adoption applied. The juvenile court terminated parental rights. Willie appealed.

Affirmed. Willie was not a presumed father under Fam. Code 7611(d), because he never received Jason into his home and held Jason out as his child. Nor was he a *Kelsey S.* father, because he never attempted to assume full parental responsibility and nobody thwarted his efforts to assume responsibility for Jason. Since he was a mere biological father, his parental rights could be terminated based solely on the child's best interests, without any showing of detriment or unfitness. The WIC 366.26(c)(1)(B)(i) exception did not apply, because Willie's relationship with Jason was merely that of a 'friendly visitor,' not a parent. (MM)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-32 Providing a Birth Certificate to Youth and Legal Guardians

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0932ProvideBirthCertificate.doc>

This FYI is to remind CSWs that they must obtain the child's birth certificate as early as possible and to direct them to Procedural Guide 1200-500.10 "Vital Records (Birth, Death, Marriage and Divorce)" which sets forth the procedures to request the birth certificate and/or to register the birth of a child, if necessary. This procedural guide also reminds CSWs that pursuant to WIC 391, a transitioning youth must be provided with a certified birth certificate before court jurisdiction is terminated and guides them to Procedural Guide 0100-535.60 "Youth Development: Transitioning to Independence" for more information. Finally, this guide also notifies CSWs that, effective immediately, a certified birth certificate, must be provided to the youth and/or the legal guardian (Kin-GAP and non-related) before closing the case and this action must be documented in the Contact Notebook. (SA)

09-33 Forms Posting Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0933FormsUpdate.doc>

This FYI provides DCFS staff with an update to the posting of new/revised forms to LA Kids and to the CWS/CMS (LA County specific templates). (SA)

09-34 Policy Release Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0934PolicyReleaseUpdate.doc>

This FYI provides DCFS staff with an update regarding the posting of new/revised Procedural Guides to LA Kids in the month of June 2009.

09-35 (REV) Mailing Attachments with Court Reports

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0935CourtRptAttachmentsREV.doc>

This FYI was issued to inform social workers that as a matter of due process and in order to provide adequate notice for support of the CSW's recommendation in a court report, attachments to the report should be included when reports are mailed to parties entitled to receive a copy. (See procedural Guide 0300-306.05 "Notice of Hearing For Juvenile Court Proceedings.") When attachments are confidential or privileged, those attachments should not be provided to all parties. Confidential/privileged information includes, but is not limited to, the identity of the reporting party, information obtained from County Counsel's office, confidential addresses, locations of persons in domestic violence shelters, reproductive information concerning minors, and information concerning some sexually transmitted diseases. When a CSW has a question regarding the confidentiality and/or privileged disclosure of information contained in an attachment, the worker should consult with the trial county counsel or an out-stationed county counsel. (SA)

Procedural Guides:

E060-0570 Rate Change Request for Regional Center Arm (Alternative Residential Model) Rates and Dual Agency Rates

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E060/E060570RegionalCenteRatesv0609.doc>

This procedural guide provides staff with guidelines on setting up dual agency care rates for children who are California Regional Center clients and receiving Aid to Families with Dependent Children-Foster Care or Adoption Assistance Program Benefits. (SA)

E080-0570 (REV) Initial Determination for Financial Participation Legal Guardian

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E080/E0800570v0609.doc>

This procedural guide was revised to reflect updated work practice for the Intake Eligibility and Redetermination Eligibility social workers when determining funding for legal guardians. (SA)

E090-0570 (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/E090-0570TeenParentv0609.doc>

This procedural guide applies to teen parents who are under DCFS supervision and their children who may or may not be a dependent of the court and whom the teen parent may or may not have custody of. It was revised with information regarding the following: which caregivers may become Whole Family Foster Homes (WFFH); extension of WFFH benefits to Kin-GAP placements; clarification of group home rates for dependent infants placed with teen parent, and allowance for continuation of the Shared Responsibility Plan rate for Kin-GAP families under specified circumstances. (SA)

100-535.60 (REV) Youth Development: Transitioning to Independence

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010053560V0609.doc>

This procedural guide was updated a second time with instructions to ensure the provision of the birth certificate and other important documents to a child in a non-related legal guardianship placement prior to case closure. (SA)