



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA

In re T.S.- filed July 14, 2009, Third Dist.

Docket No. C059718

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C059718.DOC>

County agency filed a dependency petition alleging substance abuse by both parents, among other allegations. As the mother had Indian heritage, her tribe informed the court that it planned to intervene in the proceedings. After sustaining the original petition and subsequently a supplemental petition, the court eventually terminated reunification services and set a WIC 366.26 hearing. For the hearing, the tribe identified guardianship with maternal cousins as the permanent plan pursuant to WIC 366.26(c)(1)(B)(vi)(II). However, the agency did not approve placement with the maternal relatives as they had criminal histories and instead found an adoptive placement in which one of the parents was a member of mother's tribe. The court ordered a permanent plan of adoption and terminated parental rights. Father appealed.

Affirmed. The juvenile court did not abuse its discretion when it declined to apply the exception to adoption under WIC 366.26(c)(1)(B)(vi)(II) and terminated parental rights. Under WIC 366.26(c)(1), if a court finds that a child is adoptable, it must terminate parental rights unless the court finds a compelling reason that termination would be detrimental to the child. One such reason exists where the tribe identifies guardianship with a fit and willing relative. (*See* WIC 366.26(c)(1)(B)(vi)(II).) However, the juvenile court is not obligated to adopt the permanent plan designated by the tribe without conducting an independent assessment of detriment. This is evident from the legislative history of the statute which

states that the court “*may*...find a compelling reason for not terminating parental rights” when the child’s tribe identifies a different permanent plan and the court would be required “to *consider* the alternatives to termination of parental rights provided by a tribe.” Had the Legislature intended to preclude the court from ordering a permanent plan of adoption when a tribe has identified another permanent plan, it could have placed this provision in WIC 366.26(c)(2) which enumerates circumstances under which the juvenile court “shall not terminate parental rights” and includes provisions involving Indian children. (SA)

JURISDICTION

In re R.M. – filed July 13, 2009, Second Dist., Div. One

Docket No. B210077

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B210077.DOC>

Mother appealed the juvenile court’s order declaring the children dependents of the court under WIC section 300 (b) and removing them from her custody. A previous family law order awarded mother custody of the children and visitation rights to the father. DCFS filed a petition alleging that the children had suffered and were at substantial risk of suffering serious physical harm as a result of their parents’ inability to adequately supervise or protect them. The juvenile court found that “periodic episodes of inadequate supervision of the children” caused by the parents’ “divergent approaches to parenting” resulted in S.M.’s exposure to “inappropriate sexual conduct” by her brother, R.M., and that mother’s physical and emotional problems and depression periodically rendered her unable to provide adequate care for the children.

Reversed and remanded with directions. The appellate court stated that section 300, subdivision (b) provides that a child is subject to juvenile court jurisdiction 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 his or her parent or guardian to adequately supervise or protect the child . . .” The appellate court found that reports that on a few occasions that R.M. watched adult films on his parents’ computers and televisions, dressed in women’s clothing, and spied on his sister in the shower, was not evidence of behavior that posed a threat of “serious physical harm” to the children. In addition, nothing in the record supported the conclusion that mother inadequately supervised her children or acted inappropriately once she learned of the inappropriate sexual conduct. The appellate court also found no evidence to support the court’s finding that mother’s physical and emotional problems placed her children at risk and emphasized that in order to sustain a petition under section 300, subdivision (b) there must be evidence that “circumstances existing *at the time of the hearing* make it likely the children will suffer the same type of “serious physical harm or illness in the future.” (JC)

DENIAL OF REUNIFICATION SERVICES; WIC 361.5(b)

In re T.M. – filed July 17, 2009, Third Dist.

Docket No. C059898

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C059898.DOC>

Newborn baby was detained because mother was on psychiatric hold in hospital. Mother's whereabouts were unknown at time of detention hearing, and juvenile court denied services under WIC 361.5(b)(1). Three months later, county agency was informed that mother was in a locked psychiatric facility. Agency did not develop a case plan because mother was receiving services at the facility. At six-month hearing, court terminated services and set a WIC 366.26 hearing. Court terminated parental rights at the 366.26 hearing. Mother appealed.

Reversed. Under WIC 366.26(c)(2)(A), juvenile court may not terminate parental rights unless reasonable services have been offered or provided, or one of the 361.5(b) exceptions applies. WIC 361.5(b)(1) is not listed in WIC 361.5(f) as one of the circumstances which can directly lead to setting a WIC 366.26 hearing. Once mother's whereabouts became known, the agency should have either provided services, or sought an order denying services under one of the 361.5(b) exceptions. The error was not harmless because mother never had an opportunity to reunify with her child or to challenge a request to deny her services under 361.5(b). (MM).

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-36 Redacting Confidential Address Information From Court Report and Attachments

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0936ConfidentialInfo.doc>

This FYI is to remind CSWs that whenever the address of a child or parent is confidential pursuant to WIC 308(a) or by court order, they must ensure that the address does not appear any where in the body of the report. In addition, if the address appears in any attachment, that information must be redacted. When a CSW has a question regarding the redaction of any information (s)he should consult with the trial county counsel or an out-stationed county counsel. (SA)

Procedural Guides:

0070-521.11 (REV) Assessment of Medical Neglect

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007052111v0709.doc>

This procedural guide was revised with updated information for CSWs on handling medical neglect cases. (SA)

0100-510.65 (REV) Placing Sibling Groups In Out-of-Home Care

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051065v0709.doc>

This procedural guide was revised with updated practices, including the necessity of holding a TDM when contemplating a placement decision, documenting visitation between siblings, and the responsibilities of social workers when considering placement of siblings together or once they determine that the siblings cannot be placed together. (SA)

0600-500.00 (REV) Utilization of Medical Hubs

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050000v0709doc.doc>

This procedural guide was revised to reflect the current procedures for using the Medical Hub. Instructions related to Coordinated Services Action Team (CSAT) are included for offices where it has been implemented (Santa Fe Springs and Belvedere offices). This is a newly developed foundation to support the systematic mental health screening, assessment, and service linkage for all DCFS children with an open case. (SA)

0600-509.00 (REV) Dependency, Drug Court (DDC) / Family Substance Abuse Treatment Program (FSATP)

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050900v0709.doc>

This procedural guide was revised with updated information on the Dependency Drug Court / Family Substance Abuse Treatment Program. (SA)