



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

JURISDICTION

In re James R.- filed July 15, 2009 and published July 30, 2009, Fourth Dist., Div One
Docket No. D054065

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D054065.DOC>

County agency filed a dependency petition alleging that the mother had a mental illness, developmental disability or substance abuse problem, and the father was unable to protect the children. The agency filed the petition after the mother ingested eight ibuprofen and a few beers. Although she had a history of suicide attempts, she stated she was not intentionally trying to harm herself. At a contested jurisdiction and disposition hearing, the court sustained an amended petition, declared the children dependents of the court, and placed them with their parents on condition that the mother's contact remain monitored. The parents appealed the jurisdiction and disposition orders.

Reversed. There was no evidence that the parents' conduct caused actual harm or created a substantial risk of serious harm to the children, or that the mother's mental health problem or use of alcohol prevented either parent from providing the children with regular care. Harm may not be presumed from the mere fact that a parent has a mental illness. Here, the mother had not abused or neglected her children in the past despite her history of mental illness. Further, any connection between her mental state and future harm to the children was speculative because after the children were born, the mother did not have any suicidal ideation and there was never a determination that she was a danger to herself or others. The agency also did not specifically show how the children were or would be harmed by their mother's alleged substance abuse, there was no evidence that the mother used illegal drugs after her

children were born, the agency's reports only referred to "possible substance abuse," and although the mother drank beer she was not regularly intoxicated, never rendered incapable of providing regular care to her children, and never posed a risk to them. Finally, the children were healthy and well cared for, were attending school or daycare while the parents worked, the parents were meeting the children's medical and academic needs, the parents communicated well with each, the family had the support of extended family members who assisted with child care, and the father was able to protect and supervise the children. (SA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-30 (REV) Family Group Decision Making (FGDM) for Pregnant and Parenting Teens

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0930Rev.doc>

This FYI provides updated information on the Pregnant and Parenting Teen Family Group Decision Making (PPT FGDM) process, which is a proactive tool intended to identify and discuss issues related to pregnancy and early stages of child rearing. Its long term goal is to assist in breaking intergenerational cycles of children being brought into the child protection system. (SA)

09-37 Performance Outcome Monitoring System for Foster Family Agency and Group Homes

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0937PerformanceOutcomeMonitoringSystem.doc>

This FYI informs DCFS staff about "The Performance Outcome Monitoring System" (POMS) which is a new DCFS web application that was implemented August 3, 2009 and is administered by the Out-of-Home Care Management Division. It was developed to automate performance monitoring of contracted Foster Family Agencies and Group Homes' in the areas of safety, permanency, and well being. The system provides the ability for Out-of-Home Care Management staff to record the results of their monitoring reviews of the quality of care provided to DCFS children placed with FFAs and Group Homes and assists in determining providers' compliance with the performance measures in accordance with the Foster Care Agreement. (SA)

09-38 Maintaining the Confidentiality of DCFS Case Records

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0938Conf.doc>

This FYI is a reminder to all DCFS employees that they have a legal duty to preserve and protect the confidentiality of DCFS case records (including referrals). Failure to adequately preserve and protect the confidentiality of the records in the control of DCFS could result in legal action being taken against the individual responsible for the breach of confidentiality as well as DCFS. The disclosure of DCFS case records in any form (i.e., hard copy, written, electronic, or verbal) to any individual not authorized to receive such information under the

law is strictly prohibited. As such, all requests from the media for information regarding a case/referral (past or present) shall be referred to the Office of Public Affairs. Further, this policy is also to remind staff that it is DCFS policy that all DCFS employees are prohibited from requesting, viewing, or obtaining any case/referral record information (verbally, written, or electronically) for any purpose other than to complete their assigned work. Any employee that violates this policy will face disciplinary action up to and including discharge. (SA)

09-39 Forms Posting Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0939FormsUpdate.doc>

This FYI is to inform DCFS staff that new/revised forms were posted to LA Kids and to the CWS/CMS (LA County specific templates). (SA)

09-40 Policy Release Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0940PolicyReleaseUpdate.doc>

This FYI is to inform DCFS staff that new/revised Procedural Guides were posted to LA Kids in the month of July 2009. (SA)

Procedural Guides:

0080-506.16 (REV) Obtaining Services For Incarcerated/Institutionalized Parents

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050616v0709.doc>

This procedural guide was updated to reflect recent legislation regarding incarcerated and/or institutionalized parents/legal guardians (AB 2070): the court is to take into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to court-mandated services and the ability of the parent to maintain contact with the child to determine if reunification services shall be extended. The CSW must clearly document these barriers in the case plan and court report. This procedural guide was further updated to inform CSWs that pursuant to Penal Code 2625, they are only required to submit a removal order for an incarcerated parent for the Jurisdictional/Dispositional hearing to adjudicate the child a dependent of the court and for the WIC 366.26 hearing where parental rights will be terminated. It is not legally required for an incarcerated parent to be present at a WIC Section 366.26 hearing to appoint a legal guardian or when the permanent plan is a permanent placement living arrangement. However, it is best practice to request a removal order for all appearance hearings when a parent is incarcerated in a Los Angeles County or local facility. (SA)

0200-511.06 (REV) Adoption Assistance Program (AAP): Impact on Public Assistance Programs

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020051106v0809.doc>

This procedural guide was revised to reflect current policy, including the procedure for informing prospective adoptive parents who adopted a child at any point after their 13th birthday that their income would not be included in the calculations for determining the child's financial need for college. (The Adoption Assistance Program allows children to receive monthly funding until they turn 18 years old or until 21 years of age if the child has a mental or physical handicap which warrants the continuation of assistance.) (SA)

0300-306.45 (REV) Removal Orders For Parents and Youths

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030645v0709.doc>

This procedural guide was updated to inform CSWs that pursuant to Penal Code 2625, they are only required to submit a removal order for an incarcerated parent for the Jurisdictional/Dispositional hearing to adjudicate the child a dependent of the court and for the WIC 366.26 hearing when that hearing will result in termination of parental rights. It is not legally required for an incarcerated parent to be present at a WIC Section 366.26 hearing to appoint a legal guardian or when the permanent plan is a permanent placement living arrangement. However, it is best practice to request a removal order for all appearance hearings when a parent is incarcerated in a Los Angeles County or local facility. This procedural guide was further updated with the telephone numbers to obtain information on incarcerated parents and youths. A list of prisons with their addresses and telephone numbers has also been added. (SA)

E020-0100 (REV) Eligibility Activity

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E020/E0200100EligibilityActivityv0809.doc>

This procedural guide was revised with updated guidelines for Eligibility Workers in meeting federal and State compliance standards when determining the initial and continuing eligibility for children in out-of-home care programs. (SA)

E020-0500 (REV) Foster Care Eligibility General Requirements

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E020/E0200500FosterCareEligibilityv0809.doc>

This procedural guide provides updated instructions and guidelines for Eligibility Workers in the completion of their tasks and responsibilities, including the requirements for AFDC-FC eligibility and the procedure to follow when there is a change in eligibility or when re-determining eligibility. (SA)

E030-0510 (REV) Initial Determination for Financial Participation

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E030/E0300510InitialDeterminationv0809.doc>

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This procedural guide updated the guidelines for Eligibility Workers to follow when meeting the federal and state compliance standards, including, accurate and timely payments to caregivers, timely referrals for issuing Medi-Cal, implementing model case format to comply with State and Federal regulations, and completing initial and yearly redeterminations. (SA)

E040-0510 (REV) Emergency Assistance Program

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E040/E0400510EA%20v0809.doc>

This procedural guide defines the criteria that must be met before a child can be determined eligible for Emergency Assistance (EA), the procedure for assembling an EA, and the reasons for denial of an EA. Emergency Assistance is a federally funded program under Title IV-A of the Social Security Act. Under the provisions of this Act, Federal Financial Participation (FFP) is available to provide assistance to children in emergencies. The EA program allows the pass-through of federal funds to provide services to a child experiencing an EA emergency as defined in California's Title IV-A State Plan. (SA)