



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA

In re B.R.- Filed August 13, 2009, First Dist., Div. One

Docket No: A122581

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/A122581.PDF>

The trial court sustained allegations that mother neglected children within the meaning of WIC 300, subdivision (b). At a subsequent review hearing, the court terminated services for mother and set the matter for a section 366.26 hearing. After a contested 366.26 hearing, the court terminated parental rights, and mother appealed, on the grounds that no notices were sent to the Apache tribe, as required by the ICWA. At the jurisdiction hearing, paternal grandmother had reported that father was adopted and that his adoptive father was one-fourth Apache. The court ordered notice be given to various tribes, including the Apache tribe “if required by law.” No notices were sent to the Apache tribe, apparently because the county agency believed no notices were required because the children were not biological descendants of an ancestor with Apache blood.

Reversed (limited). The guidelines promulgated by the BIA shortly after the passage of the ICWA represent the Department of the Interior's interpretation of certain provisions of the ICWA. Because the Interior Department is the executive agency charged with administering the ICWA, the Guidelines are entitled to great weight. The Guidelines provide that when a state court has reason to believe that a child in a dependency proceeding is an Indian, the court shall seek verification from the child's tribe. The tribe's determination that a child is or is not a member of that tribe, or is or is not eligible for membership in that tribe, is “conclusive.” Therefore, it was error to allow the county agency to determine whether the

children were Indian children for purposes of the ICWA, rather than allowing the Apache tribe to make that determination by ordering notice be sent to the tribe. (PB)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-41 2009 Back-To-School Clothing Allowance (BTSCA)

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

This FYI advises DCFS staff that on August 17, 2009, the automatic BTSCA warrants were issued. Further, August 14, 2009 at 3:00 pm was the last day for CSWs to update CWS/CMS in order for a foster child to be included or excluded in the automatic Back-to-School Clothing Allowance process. Also, this FYI notifies staff that current policy does not allow BTSCA for children residing in group homes and that Emergency Aid Requisitions are not to be used for the issuance of BTSCAs. (SA)

09-43 (REV) Mentoring Opportunities For DCFS Youth

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0943Mentoring.doc>

This FYI is to notify staff that the DCFS Mentoring Section is now accepting referrals for youth who would benefit from a relationship with a caring adult mentor. This FYI specifies the criteria that must be met for youth to be eligible for mentoring services and the referral process. (SA)

Procedural Guides:

E080-0510 An Initial Determination for Eligibility has not Been Completed for a Child in Out-Of-Home Care or the Initial Eligibility Determination is Found to be in Error

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E080/E0800510v81709.doc>

This procedural guide, which replaces Procedural Guide E030-0100 “Foster Care Eligibility Determination- Add Child,” reflects updates in the Technical Assistant Eligibility Worker’s responsibilities. (SA)