



Children's Law Center of Los Angeles

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NEW DEPENDENCY CASE LAW

ICWA

In re G.L., filed September 9, 2009, Fourth Dist., Div. One

Docket No. D054257

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D054257.PDF>

A petition was sustained finding that two year old G.L. was at risk under WIC 300, subdivisions (a) and (b). Because father was an enrolled member of the Viejas tribe, and G.L. was eligible for enrollment, the court found ICWA applied and ordered the county agency to send notice to the Viejas tribe. After the jurisdiction hearing, paternal grandmother, Mary, gave the social worker a form indicating that mother had designated her an “Indian custodian.” The county agency thereafter filed a section 342 petition seeking to remove G.L. from Mary’s custody. The court continued the hearing to address the Indian custodian issue, and at the continued hearing, mother filed a “Revocation of Designation of Indian Custodian.” The court dismissed the section 342 petition on the grounds that Mary was no longer the custodian. At the subsequent disposition hearing, father and the Viejas tribe argued that the prior jurisdictional findings must be vacated because Mary, as G.L.’s custodian, was entitled to ICWA notice and appointment of counsel. The court disagreed, and father appealed.

Affirmed. ICWA defines an “Indian custodian” as an Indian person “who has legal custody of an Indian child under tribal law or custom or to whom temporary physical care custody and control has been transferred by the parent of such child.” Mary was the custodian of G.L. at the time of the jurisdiction hearing and continuing until the designation was revoked.

However, because the agency and the court was unaware of Mary’s status as Indian custodian, and had no reason to know of it, the failure to notice Mary was not a violation of the ICWA

notice provisions. From the time that the court and the agency learned of Mary's status as Indian custodian, until the time the status was revoked, no hearing occurred that had an adverse impact on Mary's rights as an Indian custodian. Further, a notice violation under ICWA is not jurisdictional, but instead is subject to harmless error review. To the extent that Mary was entitled to ICWA notice before her Indian custodian status was revoked, any error was harmless. (PB)

Reunification services; incarcerated parents; WIC 366.21(e)

S.T. v. Superior Court – filed August 28, 2009, ordered published Sept. 18, 2009, Second District, Division One
Docket No. B216686

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B216686.PDF>

Child was detained at birth due to drug exposure, and placed with paternal grandparents. Father was incarcerated. He was ordered to participate in drug testing, drug treatment, parenting, and counseling. Father wrote to the caseworker stating that he wanted to comply with the court's order but no programs were available to him in prison. At WIC 366.21(e) hearing, county agency recommended continuing reunification services so that caseworker could meet with father and determine his ability to comply once released. Father appeared and requested another six months of services. Juvenile court terminated services, holding that since father had not had consistent contact with the child nor made progress in resolving case issues, under WIC 366.21(g)(1) the court could not make the findings necessary to continue reunification services. Father filed writ petition.

Writ granted. Juvenile court applied wrong legal standard, and erred in believing it had no discretion to continue reunification services. Under WIC 366.21(e), if a parent has not participated regularly and made substantive progress in case plan, the court *may* – but is not required to – terminate services and set a WIC 366.26 hearing. Also, recent amendments to WIC 361.5(e) indicate a legislative policy of easing the barriers to reunification faced by incarcerated parents. Error was not harmless in light of facts that child was placed with paternal grandparents, father would be released soon, and father expressed desire to reunify. Remanded for a new WIC 366.21(e) hearing. (MM)

UNPUBLISHED CASES OF INTEREST

Parentage; Fam. Code §§ 7611(d), 7612(a)

In re J.O.. – filed Sept. 9, 2009, Second Dist., Division Four

Docket No. B211535

Three children were detained due to physical abuse by mother and physical and sexual abuse by stepfather. Mother told county agency that Martin O was the children's father; he had lived with them until the youngest child was a year old, but then left and had not seen or contacted the children for many years. Child welfare agency located Martin O. in Mexico and contacted him by telephone. Juvenile court found that Martin O. had received the children into his home and held them out as his children, but his presumed father status had "fallen away" because he had not kept in contact with the children or provided financial support. Martin O. appealed. Reversed. Family Code § 7612(a), which provides that the § 7611(d) paternity presumption is rebuttable "in an appropriate action," should not be invoked when the result would be to leave the child with less than two parents. Father's failure to maintain a relationship with the children and support them would only be relevant if there were a competing, stronger claim to presumed father status. (MM)