



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA

In re E.G. – filed February 10, 2009, Third Appellate District

Docket No: C059277

Link to case: <http://www.courtinfo.ca.gov/opinions/pub/C059277.DOC>

Mother appealed termination of parental rights arguing reversal was required because there was a failure to give ICWA notice to all identified tribes. Mother claimed possible heritage in the Apache and Blackfeet Indian tribes and A.J., one of two alleged fathers, claimed possible heritage in the Cherokee and Pomo Indian tribes. The juvenile court ordered the agency to provide notices to the tribes and paternity tests for the alleged fathers. The agency sent ICWA notices to the tribes claimed by mother but not the tribes claimed by alleged father A.J. because his paternity test results excluded him as the biological father. After the mother failed to reunify with E.G., the juvenile court terminated parental rights.

Affirmed. The appellate court stated that until biological paternity is established, an alleged father's claim of Indian heritage does not trigger any ICWA notice requirement because, absent a biological connection, the child cannot claim Indian heritage through the alleged father. Because A.J. was excluded as the biological child of E.G., no notice was required under ICWA. (JC)

SERVICEMEMBERS CIVIL RELIEF ACT

In re A.R. – filed January 26, 2009, Fourth Appellate Dist., Div. One
Docket No. D053125

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D053125.DOC>

A.R. was born in September 2007 at 34 weeks gestation, and after birth had numerous problems requiring extensive blood testing to diagnose the ailment, as well as to rule out physical abuse. On November 20, 2007, A.R. was detained. A trial was eventually scheduled for April 25, 2008 in order to allow time for testing results. On April 17, 2008, father filed a request for a stay pursuant to the Servicemen’s Civil Relief Act (“SCRA”)(50 U.S.C. Appen. §§ 501-596), on the grounds that he was to be deployed in Iraq until November. The trial court concluded that whether to stay the proceedings pursuant to the SCRA was discretionary, and denied the request, citing the time constraints that apply in juvenile dependency cases. Father appealed.

Reversed and remanded for new jurisdictional and dispositional hearing. The SCRA applies to any judicial proceeding in state court (except criminal proceedings). Upon application, a military service member who is a party to any civil action is entitled to a stay of at least 90 days. The juvenile court did not have discretion to deny father’s request for a stay. The SCRA pre-empts WIC § 352(b), which imposes strict time limits for dispositional hearings in dependency courts. (PB)

VEXATIOUS LITIGANT

In re R.H.- filed January 26, 2009, Fifth Dist.

Docket No. F055047

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F055047.DOC>

In the span of seven years, while the child was in long-term foster care, the father filed 13 final and unsuccessful appeals and writ petitions. The appellate court considered whether the father should be designated as a vexatious litigant based on his history of filing meritless appeals in propria persona that were finally determined adversely to him.

The court ruled that the father was a vexatious litigant under Code Civ. Proc. § 391(b)(1) and should be subject to a prefiling order under Code Civ. Proc. § 391.7. Code Civ. Proc. § 391.7 authorizes an appellate court on its own motion or the motion of any party to issue a prefiling order, regardless of whether an appellant was a plaintiff or a defendant in the underlying proceeding. This requires the litigant to seek prior court approval before filing new actions. Although Code Civ. Proc. § 391.7(d) did not mention WIC, the vexatious litigant law can be applied in dependency proceedings. Further, application of this law does not violate the father's First Amendment right to petition the government for redress of grievance or his Fourteenth Amendment Right to due process. Finally, the vexatious litigant law does not violate the Cal. Const., art. VI, §§ 3 and 14 as the presiding judge does not address the merits of the appeal but only determines whether the new litigation appears to have merit and is not being filed for the purposes of delay or harassment. Thus, any decision whether to allow the father in propria persona to file future litigations will be made on a case-by-case basis, taking into account factors such as

the nature of the action below, nature of the lower court's ruling, whether a writ petition or appeal is the appropriate procedure for seeking review, the father's claim of error, and whether he has demonstrated improper reasons for bringing the appeal or writ petition. (SA)

NON-DEPENDENCY CASES OF INTEREST

DELINQUENCY; SEX OFFENDER REGISTRATION; DUE PROCESS

In Re J.P. – filed Jan. 7, 2009, Ordered Published Feb. 5, 2009, First District, Division Five
Docket No. A118858

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A118858.DOC>

In 1998, when J.P. was 12 years old, he called the child abuse hotline and confessed that he was doing “nasty things” to his younger brother. As a result, a delinquency petition was filed alleging lewd conduct and forcible oral copulation. J.P. pleaded to a lesser offense, non-forcible oral copulation on a minor, Penal Code 288a(b)(1). He was later committed to the Youth Authority on a probation violation. In 2007, as an adult, J.P. was charged with failing to register as a sex offender. He filed a motion to set aside the sex offender registration requirement, which the trial court denied. J.P. appealed. Reversed. The sex offender registration statute, Penal Code 290, is unconstitutional as applied to J.P. because it does not require registration for a *more* serious offense than J.P. was adjudicated to have committed -- unlawful intercourse with a minor, Penal Code 261.5 – under the reasoning of *People v. Hofsheier* (2006) 37 Cal.4th 1185. (MM).

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-03 New Transitional Independent Living Plan (TILP) Agreement for Foster Youth

Link to FYI: http://dcfs.co.la.ca.us/Policy/recent_updates/PolicyUpdate.htm

This FYI is a reminder to staff to follow FYI 08-34, “New Transitional Independent Living Plan (TILP) Agreement for Foster Youth” that was released 8/19/08. It has come to DCFS’s attention that CSWs are not using the new TILP agreement and that the Juvenile Court considers the old TILP agreement unsatisfactory. If the old TILP agreement is submitted to the court, the hearing will be continued for receipt of the new

TILP agreement, and if the new TILP agreement is not submitted at that hearing the Court will begin issuing sanctions. (SA)

09-04 Use Of Unauthorized Forms

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0904UseUnauthorizedforms.doc>
This FYI cancels FYI 06-50 "Use Of Unauthorized Forms" dated 9/14/06. It is to remind staff that the use of unauthorized forms is prohibited and that staff shall only use DCFS authorized forms. Staff shall not use cancelled forms, cancelled versions of forms, or create their own forms. Authorized forms are listed throughout DCFS Policy and most of those forms can be found in the Forms Section on LA Kids, and/or CWS/CMS. In addition, a list of cancelled forms can be found in the Forms Section on LA Kids. (SA)

09-06 The Correct Completion of AAP Documents

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0906AAPDocuments.doc>
This FYI provides guidelines to CSWs on completing AAP documents to ensure that they are completed correctly to facilitate timely permanence and compliance with applicable regulations. (SA)

Procedural Guide:

Glossary Glossary

Link to Procedure:
<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1300/GLOSSARYv0109.doc>
This procedural guide has a glossary of definitions/descriptions of relevant terms of dependency. (SA)