



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

TERMINATION OF PARENTAL RIGHTS—DUE PROCESS

In re A. S.--filed December 17, 2009, Fourth Dist., Div. 1

Docket No. D054951

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D054951.PDF>

Children were found to be dependents under section 300 due to mother's drug use. Father was informed of the detention proceedings, but did not appear. He told the social worker that he was not in a position to care for the children. Children were returned to mother and later detained on a section 387 petition when mother relapsed. At the 387 proceedings, the court found by clear and convincing evidence that return of children to mother or father would create a substantial risk of detriment. The court terminated mother's reunification services and set a section 366.26 hearing. On the day of the 366.26 hearing, the trial court terminated parental rights as to both parents. Father appealed.

Affirmed. Principles of substantive due process do not prohibit termination of parental rights without a jurisdictional finding that the parent was unfit and a subsequent finding of detriment. Father relies on *In re Gladys L.* (2006) 141 Cal.App.4th 845, which held that a court may not terminate parental rights without having made an initial determination of unfitness under section 300. However, *Gladys L.* was incorrectly decided. A sustained petition as to each parent is not a required precursor to termination of parental rights. In this case, the finding by clear and convincing evidence that return of the child to father would create a substantial risk of detriment was supported by substantial evidence, and the resulting termination of parental rights comports with statutory and constitutional requirements. (PB)

WIC 360(a) GUARDIANSHIPS- NOTICE TO AND WAIVER FROM NON CUSTODIAL PARENT

In re L.A.- filed December 18, 2009, Sixth Dist.

Docket No. H034276

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/H034276.DOC>

Children were detained from father and placed with paternal grandparents. Although mother's whereabouts were unknown, the social worker was able to make telephonic contact with her from a cell phone number the grandparents had to notify her of an upcoming court hearing. However, she did not attend any court hearings and the court was unable to provide formal notice of the proceedings to her because her whereabouts remained unknown. At the jurisdiction hearing, father notified the court that he wanted to waive reunification services and asked the court to order a guardianship with the grandparents under WIC 360(a). The court instead sustained the petition and ordered reunification services for the parents, finding that it could not grant a guardianship under WIC 360(a) without the mother waiving reunification services. Father appealed.

Reversed. WIC 360(a) allows the court to order a legal guardianship at the disposition hearing when the custodial parent agrees to waive reunification services and that parent, the child (when appropriate), and the court agree that it is in the best interest of the child. If the noncustodial parent's whereabouts are unknown or that parent is otherwise reluctant or unwilling to be involved in the dependency proceedings or to receive reunification services, that parent's express waiver of reunification services is not required. WIC 360(a) contemplates that the whereabouts of a noncustodial parent may be unknown or that the parent may refuse to participate in the court proceedings. As such, it requires the county agency to prepare an assessment report, which must include information concerning the efforts to contact and notify the noncustodial parent in accordance with WIC 291, for the court to read and consider before it appoints a legal guardian. Here, once the father and children's counsel agreed to a guardianship, the court had the authority to order one and then continue the disposition hearing for the county agency to prepare the required assessment report with information about notice to the mother for the court to read and consider prior to granting the guardianship. (SA)

NON-DEPENDENCY CASES OF INTEREST

DELINQUENCY; ICWA

In re R. R.—filed Dec. 17, 2009, Third Dist.

Docket No. C060573

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/C060573.PDF>

Child was adjudged a WIC 602 ward of the Sacramento Juvenile Court after a petition alleging felony assault was found true. After a violation of probation, the probation department recommended that child be suitably placed in foster care. At a regularly

scheduled settlement conference, child's counsel requested that the court find ICWA applicable. The juvenile court found that ICWA does not apply in a juvenile delinquency proceeding for a minor for which the case plan does not include a termination of parental rights. Child filed a petition for writ of mandate to compel the juvenile court to vacate its order refusing to apply ICWA.

Petition granted. Federal law expressly exempts from ICWA's reach cases involving the placement of a child based on an act by the child which would be deemed a crime if committed by an adult. Historically, this has meant that most juvenile delinquency proceedings have been exempt from ICWA. However, in 2006 California passed legislation imposing upon the court and county agencies a duty of inquiry and notice in any proceeding brought pursuant to WIC 602 where the child is at risk of entering foster care or is in foster care. In addition, the Judicial Council has adopted rules of court governing the requirements of ICWA, which are specifically applicable to proceedings under section 602 in which the child is at risk of entering foster care or is in foster care. California law, which imposes a higher standard of notice and inquiry, is not pre-empted by federal law. (PB)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

MD 09-11 Standards for Supervising Children's Social Workers (SCSWs)

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Management%20Directives/MD0911SCSWStandards.doc> (SA)

This managerial directive provides professional standards for SCSWs to follow by outlining the SCSW's responsibilities to the County, profession, social work staff, and children and families under their purview. (SA)

0070-570.10 (REV) Obtaining A Search and/or Custody Warrant

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007057010v1209.doc>

This procedural guide was revised to improve compliance with federal and state law by clarifying the use of warrants for CSWs who are investigating child abuse referrals. (SA)

0100-520.35 (REV) Kinship Guardianship Assistance Payment (KIN-GAP) Program

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052035v1209.doc>

This procedural guide was revised to reflect that the dual agency rate may now be authorized for Kin-GAP. (SA)

0100-535.40 (REV) Continuation of AFDC-FC Payments for Non-court Dependent Youth Age 18 or Over Residing in an Unrelated Home or in the Home of a Kin-Gap Guardian

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010053540v1209.doc>

This procedural guide was updated with instructions to enhance the collaboration between CSWs and Eligibility staff to obtain educational documentation needed to determine a youth's eligibility for continued AFDC-FC payments. This includes the use and revision of the DCFS 1726 form to gather the information previously requested via the DCFS 1725.1 form. (SA)

0100-535.60 (REV) Youth Development: Transitioning To Independence

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010053540v1209.doc>

This procedural guide was updated with instructions to ensure that a youth's application for food stamps is initiated prior to the youth exiting foster care. It clarifies that the Transition Conference shall be held 90 days prior to the court hearing recommending termination of court jurisdiction for a transitioning youth or when a youth is residing in the home of a non-related legal guardian and the youth is aging out of guardianship. It adds that if a Permanency Planning Conference (PPC) has been held that meets the needs of a T-Conference and/or if transition planning is incorporated into the Youth Permanency (YP) Team meeting for youth served by a YP Unit and the needs/goals of the T-conference are met in the YP Team meeting, a separate T-conference is not required with the exception of a mandatory T-conference. (SA)

0100-535.70 (REV) Pre-Exit Interview for Transitioning Youth

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010053570v1209.doc>

This procedural guide was updated with instructions to ensure that a youth's application for food stamps is initiated prior to the youth exiting foster care. It clarifies that the Transition Conference shall be held 90 days prior to the court hearing recommending termination of court jurisdiction for a transitioning youth or when a youth is residing in the home of a non-related legal guardian and the youth is aging out of guardianship. (SA)

0400-503.10 (REV) Contact Requirements And Exceptions

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0400/040050310v1209.doc>

This procedural guide was updated to inform CSWs that when making monthly home visits, they must ask the caregiver and children residing in the home if anyone new is living in the home that is 14 years or older. (SA)

0900-511.12 (REV) Regional Center Rates For Dual Agency Children

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090051112v1209.doc>

This procedural guide was revised to reflect that the dual agency rate may now be authorized for Kin-GAP, as specified in WIC 11364. It was also revised to reflect that Early Start program eligibility requirements have been amended to eliminate "at risk", as an eligibility criterion, in accordance with the Fiscal Year (FY) 2009-10 Trailer Bill language (ABX4 9, Chapter 9, Statutes of 2009) enacted on July 28, 2009. (SA)

0900-517.10 (REV) Reimbursement of Non-Recurring Adoption Expenses

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090051710V1209.doc>

This procedural guide was revised to further define the meaning of non-recurring adoption expenses. These are reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law, and which have not been reimbursed from other sources or other funds. (SA)

1200-500.82 Coordination of Services For Homeless Clients Served by Both
the Department of Public Social Services (DPSS) and DCFS

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007055911v1209.doc>

This procedural guide, which is only applicable to all new and existing Family Maintenance cases who are being simultaneously served by DPSS California Work Opportunity and Responsibility to Kids (CalWORKs), notifies staff that the primary purpose of this service coordination is to address the family's housing needs through support and outreach provided to the family by the DPSS Homeless Case Managers (HCMs). (SA)