



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

Vol. 5, No. 5 March 25, 2009

Issued by the Children's Law Center of Los Angeles the second and fourth Tuesday of each month

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NEW DEPENDENCY CASE LAW

ICWA

In re K.M.- filed March 16, 2009, Second Dist., Div. Six

Docket No. B206435

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B206435.DOC>

The agency interviewed mother and maternal grandmother regarding child's Indian ancestry. Although both identified the great-grandparents as having Indian ancestry, grandmother refused and mother was unable to provide further information on them. Based on all the information provided, the agency gave notice to the respective tribes and none of the tribes indicated the child was a member. The court subsequently terminated parental rights. Mother appealed claiming the agency did not interview the maternal great-grandmother regarding possible Indian ancestry.

Affirmed. The agency did all that could or should have been reasonably expected of it under ICWA. It gave notice to the tribes identified by maternal grandmother, providing the names of the maternal grandparents and great-grandparents as well as all other information it was able to obtain. The agency attempted on several occasions to elicit further information from the family but was unsuccessful because of the family's hostility toward the agency. As the agency's request for information needed to contact the great-grandmother was refused, it was not required to make further inquiries based on mere supposition. (SA)

RESTRAINING ORDER; WIC § 213.5

In re B.S. – filed March 17, 2009, Fourth Dist., Div. Two

Docket No. E045748

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/E045748.DOC>

Father appealed from the juvenile court's issuance of a restraining order under WIC 213.5 arguing the court lacked jurisdiction to issue the order because the criminal court already issued a similar restraining order under Penal Code section 136.2. Father had been charged with spousal battery and was on probation for a 2003 conviction for assault with a deadly weapon. When B.S. was 7 months old and living with his parents, father engaged in domestic violence against the mother in which he hit the mother, put a hole in the bedroom wall by throwing a telephone, broke the bathroom door off its hinges, and grabbed mother and threw her down on top of B.S. The maternal grandmother reported that the father had been physically abusing the mother for a long time and mother minimized the domestic violence. B.S. was detained and placed with his grandmother. At the jurisdictional hearing, the juvenile court found that it had jurisdiction based on failure to protect. On the same day, the criminal court issued a restraining order against the father protecting the mother and B.S. and also provided that "the order took precedence over any conflicting protective order . . . if the protected person is a victim of domestic violence . . ." A few days later, the juvenile court issued an ex parte temporary restraining order against the father protecting the mother, B.S., and maternal grandmother. While the juvenile court's restraining order was a little more restrictive than the one issued by the criminal court, the juvenile court provided that "if a criminal restraining order conflicts with a juvenile restraining order, a law enforcement agency must enforce the criminal order . . . Any nonconflicting terms of the juvenile custody or visitation order remain in full force."

Affirmed. The appellate court found that a juvenile court restraining order may co-exist with a criminal court restraining order. California Rules of Court, rule 5.630(1) does not preclude a juvenile court from issuing its own restraining order, if it is not contrary to an existing criminal restraining order. The appellate court indicated that father did not point out any actual conflicts between the two orders and the criminal order did not require him to do anything that the juvenile order prohibits, and vice versa. In addition, both orders consistently provided that in the event of an actual conflict, the criminal order would take precedence, thus making any actual conflict for the father impossible. Further, the appellate court found that sufficient evidence supported the juvenile court's issuance of a restraining order against the father. The juvenile court could reasonably find that failure to issue the protective order might jeopardize B.S.' safety where the father had repeatedly committed domestic violence against the mother in the child's presence. (JC)

NON-DEPENDENCY CASES OF INTEREST

PROBATE CODE § 1516.5; ADOPTION OF CHILDREN IN PROBATE GUARDIANSHIPS

Guardianship of Ann S. - filed March 19, 2009, Supreme Court

Docket No. S143723

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S143723.DOC>

Parents consented to placing child in guardianship with aunt and uncle because of parents' extensive drug use, unstable relationship, and unstable lifestyle. In February 2004, aunt and uncle filed a petition to terminate the mother's parental rights under Probate Code 1516.5, alleging that they were the child's guardians since December 2001, their adoption petition was pending, and adoption was in the child's best interest. Father had already consented. The probate court found by clear and convincing evidence that adoption was in the child's best interest and terminated parental rights. The Court of Appeal affirmed and the Supreme Court granted review.

Affirmed. Probate Code § 1516.5, which authorizes termination of parental rights after two years of probate guardianship if adoption by the guardian is in the child's best interest, does not violate due process by not first requiring a finding of present parental unfitness. While due process requires a showing of unfitness when a *custodial* parent faces termination of parental rights and the best interest standard is not constitutionally sufficient in such cases, § 1516.5 has no application to custodial parents. However, a probate guardianship where all parental rights and custodial responsibilities are suspended except for visitation, is generally inconsistent with a full commitment to parental responsibilities. Further, § 1516.5 appropriately requires the court to balance all familial interests in deciding the child's best interest, including circumstances leading to the guardianship, the parent's efforts to maintain contact with the child, any exigencies that might hamper those efforts, and other evidence of commitment to parental responsibilities. The Supreme Court also noted that dependency proceedings are fundamentally different from § 1516.5 proceedings and further noted that § 1516.5 is open to constitutional challenge when applied to individual cases. Finally, although it found retroactive application of the statute consistent with due process in this case, it held that trial courts have broad discretion to consider all relevant facts in each case to determine whether to instead apply the former law which requires a showing of parental unfitness. (SA)

PROBATE CODE § 1516.5; ADOPTION OF CHILDREN IN PROBATE GUARDIANSHIPS

In re Charlotte D.- filed March 19, 2009, Supreme Court

Docket No. S142028

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S142028.DOC>

Mother and father consented to guardianship of Charlotte with paternal grandparents. Both parents had drug and alcohol problems, their relationship was unstable and included domestic violence, father was in and out of jail, and there was previous intervention from child protective services. Father, who lived with his parents, was ordered to pay child support but never made any payments. He was also cited or arrested for public intoxication, presenting false identification to a police officer, failing to appear, driving under the influence, and carrying a loaded firearm. He also engaged in irresponsible behavior toward Charlotte such as abusing the family cat in front of her, shoplifting in her presence, taking her to the liquor store and drinking in the car, and breaking into his parents' house after moving out. Although father was granted monitored visitation after moving out, the visits did not go well and were suspended. In January 2005, the guardians petitioned to terminate parental rights under Probate Code § 1516.5 and Charlotte was in agreement with adoption. After a hearing on the § 1516.5 petition, the court found by clear and convincing evidence that adoption by Charlotte's guardians was in her best interest and terminated parental rights. Father appealed, the Court of Appeal reversed, and the Supreme Court granted review.

The Court of Appeal's judgment is reversed. § 1516.5, which allows parental rights to be terminated based on the child's best interest, is facially constitutional as it only applies when a child has spent at least two years in a probate guardian's custody, and during that time, all parental rights and custodial responsibilities are suspended except for visitation. However, parents in general may challenge the constitutionality of the statute as applied to them. Further, the Court of Appeal incorrectly held that *Kelsey S.* barred termination of father's parental rights without a finding of his unfitness, if he could show his commitment to parental responsibility. Unlike the statutes under review in *Kelsey S.*, § 1516.5 does not use a different standard to terminate parental rights of a biological father as opposed to mothers or presumed fathers. Thus, § 1516.5 does not violate a biological father's equal protection rights. Further, unlike in *Kelsey S.*, the father here could qualify as a presumed father because the mother did not prevent him from receiving Charlotte into his home, but he lived with Charlotte and held her out as his own. However, not only did the father abandon his parental responsibilities and formally waive his parental rights when the guardianship was established, he engaged in subsequent conduct that confirmed his irresponsibility as a parent. He failed to make child support payments, behaved inappropriately and cruelly toward Charlotte and the guardians, abused his visitation rights, and persistently engaged in criminal behavior. Thus, § 1516.5 as applied to the father is constitutional. (SA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-55 (REV) Multidimensional Treatment Foster Care (MTFC)

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0855MTFCrevised.doc>

This FYI replaces the prior version dated 11/18/08. It is to inform staff that DCFS and DMH have implemented the MTFC program to provide a comprehensive, multi-level intervention to children in the child welfare system. This FYI discusses the criteria for eligibility, the referral processes, services provided, and the positive outcomes resulting from placement in the program. (SA)

09-13 Conversations With Attorneys And Other Non-DCFS Individuals

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0913outsideAttys.doc>

This FYI reminds CSWs of the guidelines they must follow when contacted by or when speaking with any attorneys that do not represent DCFS, such as the child's attorney, parent's attorney (including all individuals from the parent's firm), etc. In addition, this FYI informs CSWs that they cannot permit an investigator, "social worker" or unauthorized person from the non-DCFS attorney's office to attend any visits or CWS interviews without first consulting with County Counsel. (SA)

Procedural Guide:

0050-501.40 (REV) Child Abuse and Neglect Reporting Act (CANRA): Immunities and Liabilities

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050140V0309.doc>

This procedural guide was updated with revisions to Penal Code 1167.5(b)(13) which states that reports of suspected child abuse or neglect and information contained therein may be disclosed to out-of-state agencies responsible for approving prospective foster or adoptive parents for placement of a child when the agency makes the request in compliance with the Adam Walsh Child Protection and Safety Act of 2006. The Penal Code further states that the request shall also cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision. (SA)

0070-548.00 (REV) Point of Engagement: Up-Front Assessment (UFA)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054800Upfrontv0309.doc>

This procedural guide was updated with the responsibilities of the Emergency Response Command Post workers when making an Up-Front Assessment referral and the protocol for Service Providers to follow when Completing Emergency Response Command Post Up-Front Assessments. (A UFA Referral provides the worker with valuable information to make decisions in the best interest of the child who faces risk because of a parent's/caretaker's issues with mental health, substance abuse and domestic violence. The goal of UFA is to prevent unnecessary out-of-home placement through more thorough investigation and assessment, and where detention is necessary, provide information to allow for more meaningful case plans to be developed. This will be achieved by utilizing experts in the area of Mental Health, Substance Abuse, and Domestic Violence to provide comprehensive assessments and to connect families with treatment and ancillary services in the community.) (SA)

0070-548.25 Completing the Structured Decision Making (SDM) Safety Plan

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054825SDMSafetyPlanv0309.doc>

This procedural guide cancels FYI 06-12 "Use of the Structured Decision Making (SDM) Safety Plan, dated 02/09/06. It provides social workers with instructions on how to complete the SDM Safety Plan when any safety threats are identified in the home but it is determined that children can safely remain in the home with a safety plan in place. (SA)

0200-507.25 (REV) Accepting a Consent for an Independent Adoption

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050725v0309.doc>

This procedural guide was revised to reflect that a birth parent can sign a waiver of the right to revoke consent in the presence of any of the following: a representative of DCFS or delegated county adoption agency, a judicial officer of a court of record if the birth parent is represented by independent legal counsel, or an adoption service provider if the birth parent is represented by independent legal counsel. (SA)

0200-508.10 (REV) Advising and Providing Services to Parents Prior to Accepting a Statement of Understanding and Relinquishment Document

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050810V0309.doc>

This procedural guide was revised to include additional information about advising a presumed and/or an alleged father that he can sign a waiver of notice or denial of paternity before or after the birth of a child, and once signed, no notice of, voluntary relinquishment for, or consent to the adoption of the child shall be required for the adoption to proceed. (SA)

0300-301.05 (REV) Petitions

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030105v0309v2.doc>

This procedural guide was updated to reflect that the Superior Court clerk's office is no longer accepting form JV-100A when filing a 388 petition and is now only accepting forms JV-180 and JV-183. It was also revised to indicate that non-detained petitions are sent to IDC rather than the JCS liaisons. (SA)

0300-306.05 (REV) Notice of Hearing for Juvenile Court Proceedings

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030605v0309.doc>

This procedural guide was updated to address hearings held pursuant to WIC 366.25; to notify staff that children age 10 and older have the right to attend court hearings and must be given the opportunity to attend; and to also notify staff that if a parent is incarcerated in the state of California, they are to call the Department of Corrections and Rehabilitation at (916) 324-2203 to obtain the correct address to facilitate timely and effective notice of hearings for incarcerated parents. (SA)

0300-306.80 (REV) Transportation Requests to Bring Children to Court

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030680v0309.doc>

This procedural guide was revised to reflect that WIC 349 was amended to require that a child 10 years or older is entitled to notice of his/her hearing and has the right to participate in the hearing. (SA)

0300-503.15 (REV) Writing The Status Review Hearing Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050315v0309.doc>

This procedural guide was updated to inform DCFS about the legislation that passed as of January 2009. Also, best practice guidelines were added regarding how to provide more detailed information regarding visitation in court reports and how to provide active efforts to an Indian child (as opposed to reasonable efforts to a non Indian child). (SA)

0300-505.05 (REV) Children Testifying in Courts Other than in Their Dependency Court Hearing

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050505v0309.doc>

This procedural guide updated the instructions for CSWs to follow when a child has been subpoenaed to testify in another court hearing, other than his/her own hearing. (SA)

0300-506.05 (REV) Conversations with Attorneys and Other Non-DCFS Individuals

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050605v0309.doc>

This procedural guide was updated with instructions for CSWs regarding speaking with a child's delinquency attorney. (SA)

0600-501.10 (REV) Medical Consent

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050110v0309.doc>

This procedural guide modified the instructions for CSWs to follow when completing form DCFS 4225 "Report of Children's Social Worker with Recommendation of Authorization for Medical Care" to submit to court. (SA)

0600-506.10 (REV) Child Health And Disability Prevention (CHDP) Program

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050610CHDPv0309.doc>

This policy discusses utilizing the State mandated Child Health and Disability Prevention (CHDP) program to provide preventive health care for DCFS supervised children. The policy corrected the CHDP eligibility age to extend through age 20 not 21, updated the list of health assessments provided to children by the CHDP program, and updated the procedures for CSWs to follow to obtain CHDP for children in out-of-home care and children placed with their parents. (SA)

0600-514.10 (REV) Psychotropic Medication: Authorization, Review and Monitoring for DCFS-Supervised Youth

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060051410v0309.doc>

This procedural guide was updated with the task and duties for the DCFS D-Rate Unit, public health nurses, CSWs, and Caregivers regarding the psychotropic medication authorization process, review and monitoring of administration, and the effectiveness of treatment. (SA)

1000-501.20 (REV) Assignment of Emergency Response(ER) Referrals in Regional Offices

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1000/100050120v0309.doc>

This procedural guide was updated to reflect the current practice of assigning child abuse referrals. (SA)