



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

APPEAL; PARENTS' STANDING

In re Holly B. – filed April 8, 2009, Third District

Docket No. C058116

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C058116.DOC>

12-year-old child was removed from father in 2004 and placed in foster care. During the next three years she had multiple placements and ran away from several foster homes. In 2007 the juvenile court ordered a psychological evaluation of the child. Two months later, the child returned from running away, was placed in a new foster home, and opposed the evaluation because she did not want to be labeled as having mental health problems. The county agency agreed, on the grounds that the child had gone through three prior evaluations, was trying to recover and feel normal, and was doing well in the new foster home. The court rescinded the psychological evaluation order. Father appealed. Appeal dismissed. Parent does not have standing to appeal a dependency court order that does not affect his legal interests. The purpose of the psychological evaluation was to address the child's placement and behavior issues; it had no effect on father's legal rights or interests. Also, father's claim that ICWA notice was inadequate is not cognizable, because ICWA notice had nothing to do with the order appealed. (MM).

BY-PASS PROVISIONS; WIC 361.5(b)(3)

In re D.F.—Filed February 20, 2009, Third Dist.

Docket No: C057250

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/C057250.DOC>

Minor was declared a dependent in 1995 based on severe physical abuse of his older sibling by both parents. Minor was reunified with father, who was eventually granted sole physical custody. Mother was later granted custody in 2003, following a family court hearing. In July 2006, a petition was filed alleging physical abuse of minor by mother and her boyfriend and physical and sexual abuse by father. The juvenile court sustained the allegations of physical abuse by both mother and father, ordered no reunification for mother, but ordered that father receive reunification services. The county agency sought a rehearing on the court's order of reunification services for father. After a rehearing, the juvenile court denied father reunification services on the grounds that father came within the provisions of WIC 361.5(b)(3), and father had not established, pursuant to WIC 361.5(c), that reunification services would be in the best interests of minor. Father appealed, primarily on the grounds that he did not come within the provisions of WIC 361.5(b)(3).

Affirmed. Father argued that subdivision (b)(3) does not apply because the minor's most recent removal was from mother, not father. While subdivision (b)(3) requires that the minor was "removed from the custody of his or her parent" in the first proceeding, and, thereafter, returned to the parent's custody from whom he or she was originally removed, it does not specify that the second removal must be from the custody of that parent. The subdivision requires only that "the child is being removed pursuant to section 361, due to additional physical or sexual abuse." Moreover, father did not make a sufficient showing that reunification was in the best interests of the minor.

CONTEMPT; WIC 213

In re Nolan W.--filed March 30, 2008, Supreme Court

Docket No: S159524

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/F054172.DOC>

As part of a reunification plan, mother was ordered to participate in a drug treatment program in San Diego County known as Substance Abuse Recovery Management Program (SARMS). One of the features of the program is that for every incidence of non-compliance, a parent can be cited for contempt and incarcerated for up to five days. In this case, mother was sentenced to 300 days in jail for 60 separate contempt citations. Mother appealed to the Court of Appeal, which found that this lengthy jail sentence was an abuse of the court's discretion. The Supreme Court granted review to decide the question whether WIC § 213 authorized the court to hold mother in contempt and incarcerate her for failing to comply with the substance abuse program element of her reunification program.

Affirmed (with clarification). Contempt sanctions may not be used as punishment solely because a parent fails to satisfy a reunification provision. In general, a court has inherent power to enforce compliance with its lawful orders through contempt, and WIC 213 recognizes this power. However, the court's power to compel compliance with its orders to ensure the orderly administration of justice does not extend to punishing violations of

substantive law, when such violations do not impair the dignity or functioning of the court. In dependency, the legislative scheme contemplates that the ultimate penalty for a parent's failure to satisfy reunification plan requirements is the loss of parental rights. (PB)

JURISDICTION; WIC 300(b),(g); ADOPTIVE PLACEMENT

M.L. v. Superior Court – filed March 23, 2009, Second District, Division Six
Docket No. B212274
Link to case:

Mother had long history of drug abuse, and had six dependent children with whom she did not reunify. While pregnant, mother contacted an adoption agency and asked them to find adoptive parents for her child. Child was born exposed to drugs. Mother left the hospital one hour after birth, after signing form allowing hospital to release baby to adoption agency. Adoptive parents came to hospital and spent the day with the baby. Mother then called hospital and told them she was revoking her release form, and came to the hospital with a second set of adoptive parents. Hospital told mother and both sets of adoptive parents to leave, and called the hotline. County agency caseworker came to hospital and detained the baby. The next day, mother signed adoptive placement agreement with second set of adoptive parents, and gave a copy of the agreement to county agency. Agency placed baby with first set of adoptive parents, who were licensed foster parents. Juvenile court held detention hearing, denied mother's request to dismiss the dependency petition. At jurisdiction and dispositional hearing, juvenile court sustained the petition, bypassed reunification services, and set a WIC 366.26 hearing. Mother filed writ petition.

Writ denied. Juvenile court did not err in refusing to dismiss the petition. County agency detained baby after mother had revoked release form, and before mother's alternative plan with the second set of adoptive parents was documented. Under WIC 306(a)(2), caseworker may remove child if information they have at time of detention provides reasonable cause to believe child is in imminent danger. Mother did not request a contested detention hearing under WIC 321. At the jurisdiction and dispositional hearing, the petition was sustained after a full hearing. Once the petition was sustained, the court and agency had no duty to defer to mother's choice of adoptive parents for the child. (MM).

LIMITING A PARENT'S RIGHT TO MAKE EDUCATIONAL DECISIONS; WIC 361

In re R.W. - filed March 26, 2009, published April 8, 2009, Fourth Dist., Div. Three
Docket No. G040791
Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G040791.DOC>

After R.W.'s severe emotional and behavioral problems resulted in numerous failed placements, her social worker recommended that AB 3632 services be initiated to find a suitable placement. After several IEP meetings were held and a mental health assessment was conducted, everyone except the mother agreed that R.W should be placed in an out-of-state

residential treatment center. The juvenile court entered an order limiting the mother's right to make educational decisions and an order consenting to placing R.W. at the out-of-state placement as recommended by her IEP. The mother appealed.

Affirmed. The juvenile court did not abuse its discretion under WIC 361. R.W. was 16 years old and had been in foster care for seven years. During that time, she had severe emotional and behavioral problems, including aggressive behavior and violent outbursts, which resulted in several failed placement and two assault and battery charges against her. Further, R.W. had special mental health and educational needs requiring urgent treatment that had not been provided through her many previous placements, despite great effort no suitable placement was found in California, and a representative of Cathedral home found R.W. would be a good match for its program after meeting with her. The IEP team, mental health team, CASA, educational attorney, and trial counsel also agreed with the placement. Although the mother disagreed, she had never shown good judgment in making decisions affecting R.W., had been deemed an unfit parent, her reunification services had been terminated, R.W.'s 60-day trial placement with mother failed because mother went to Las Vegas during the visit and left R.W. with the maternal grandparents who abused her, the mother was inconsistent in her visits and interaction with R.W., R.W.'s siblings in California had not visited her since her placement with them ended, and the potential benefit of placing R.W. at the Cathedral Home far outweighed the loss of any support she might receive from her family. (SA)

NONCUSTODIAL PARENTS; REUNIFICATION SERVICES; WIC 364

In re Gabriel L. – filed March 24, 2009, Fourth District, Division One
Docket No. D053805
Link to case:

County agency detained two-year-old child from mother due to neglect and drug use. Mother complied with case plan. Father did not, in part because he was incarcerated and deported to Mexico during part of the reunification period. At 12-month hearing, juvenile court returned child to mother with family maintenance services, and terminated father's reunification services. Father appealed. Affirmed. WIC 364, not WIC 366.21, applies to this case because child has been returned to a parent. When a child is returned to one parent, court has discretion to continue providing services to the other parent, but is not required to do so (just as the court has discretion to continue providing reunification services, or not, when a child is placed with a noncustodial parent under WIC 361.2). It was not an abuse of discretion to terminate father's services in this case because he had made no progress on the case plan and did not visit the child even when he was able to do so. (MM).

NON-DEPENDENCY CASES OF INTEREST

WIC 827 AND 828 MOTIONS

In re R.S.- filed March 3, 2009, published March 30, 2009, Fourth Dist., Div. Three
Docket No. G040473

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G040473.DOC>

After R.S. pleaded guilty to performing lewd acts on seven year old victim, victim's family decided to pursue monetary damages against R.S.'s parents through their insurer instead of filing a civil claim. The insurance company refused to pursue further negotiations unless it was permitted to view a copy of the tape with the victim's interview, so the victim filed WIC 827 and 828 motions seeking disclosure of the tape and police report from R.S.'s juvenile file. R.S. filed an opposition but the juvenile court granted the motion in part by allowing for disclosure of the tape, but not the police report. It also ordered that the tape cannot be copied, and can only be disclosed to counsel and parents who can then show it to the insurance adjusters in pursuing their claim. R.S. filed a writ petition.

Petition denied. Juvenile court did not abuse its discretion in releasing the tape pursuant to the protective order after considering the various interests and concerns of all the parties, performing an extensive analysis under the balancing tests set forth in WIC 827 and CRC 5.552, and following protective guidelines such as conducting an *in camera* review of the records and finding that they were directly relevant to the victim's claim. Although R.S. has a need for maintaining the confidentiality of his juvenile court file, the court must also take into account the victim's needs and R.S. should not be able to shield himself from or delay possible civil liability under the guise of confidentiality. Preventing release of the tape will not protect against the ultimate dissemination of the information contained within it as the victim could testify to or disseminate the information if he chooses. It would also be more traumatic for R.S. to have the issue litigated in court than to have his parents' insurance company view the taped interview under the strict restraints imposed by the juvenile court. (SA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-14 Forms Posting Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0914FormsUpdate.doc>

This FYI is to notify staff that new forms were posted to LA Kids. (SA)

09-15 When an Adoption Can Finalize After TPR Was Reversed on Appeal *Only Due*

to ICWA Issues

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0915FinalizeAdoptionICWA.doc>

This FYI is to notify social workers of the procedure to follow if the Court of Appeal overturns a termination of parental rights (requiring the juvenile court to reinstate parental rights) for ICWA violations. (SA)

09-16 Annual \$100 Supplemental Clothing Allowance

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0916AnnualClothingAllowance.doc>

This FYI is to advise social workers that the \$100 supplemental clothing allowance will be mailed out by April 22, 2009. This allowance will be issued to all foster family homes, relative caregivers and non-relative extended family member caregivers (including Kin-GAP guardians), and to foster family agencies. Group homes are excluded. (SA)

09-17 Reminder to Staff to Refer Caregivers for Whole Family Foster Home Certification Training

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0917WholeFamilyFosterHomeTrain.doc>

This FYI is to remind staff that Community Colleges are providing Whole Family Foster Home (W-Home) certification training for caregivers. This is a 16-hour training and will include instruction on how to develop the Shared Responsibility Plan (SRP). A directory of Community Colleges with contact information is attached to this FYI. (SA)

Procedural Guide:

0070-501.10 (REV) Identifying a Client's Communication Needs

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007050110v0409.doc>

This procedural guide was revised to reflect the requirements of All County Letter No. 08-65 "Documentation Of Interpretive Services" concerning the CSWs responsibilities when documenting the use of interpretative (bilingual) service to a client. (SA)

0070-501.15 (REV) When Clients Provide Their Own Interpreter

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007050115v0409.doc>

This procedural guide was revised to reflect the requirements of All County Letter No. 08-65 "Documentation Of Interpretive Services" concerning the CSWs responsibilities when documenting the use of interpretative (bilingual) service to a client. (SA)

0080-504.11 (REV) Case Plan/Court Report: Court Report Requirements for Children Residing in Group Homes

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050411v0409.doc>

This procedural guide was revised to reflect the provisions of WIC 362.05 which entitles all dependent youths in placement to participate in age-appropriate extracurricular, enrichment, and social activities. (SA)

0100-510.40 (REV) Teen Parents in Foster Care

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051040teenParentv0409.doc>

This procedural guide was updated a second time to provide additional instructions regarding the Whole Family Foster Home (WFFH) certification process, as well as clarification instructions on initiating the WFFH and Shared Responsibility Plan rates. Further, reference to Procedural Guide 0400-504.00 “Family Visitation Planning” has been added. (SA)

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

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010053560V0409.doc>

This procedural guide was updated to include the requirement of WIC 391 that a transitioning youth be provided with any photographs of the youth or his or her family that DCFS has in its possession (excluding forensic photographs). (SA)

0300-303.15 (REV) Writing the Detention Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030315v0409.doc>

This procedural guide was revised to reflect recent legislation regarding a child’s right to be noticed and given an opportunity to attend a court hearing, and consideration of the criminal history of a parent. Also, instructions were added regarding how to access the Recommendations Guide, what recommendation language shall be included for mental/developmental assessment/services, and how to provide more detailed information regarding visitation and Hub referrals. (SA)

0300-306.27 (REV) Out of County Personal Service

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030627v0409.doc>

Instructions on the use of contracted process services for personal service for WIC 366.26 notices were removed from this procedural guide. Further, it was updated to notify staff that the form “Request for Sheriff’s Services” is now available in the LA Kids Forms page. Finally instructions on how to timely complete form JV 540 were added. (SA)

0300-503.10 (REV) Writing the Jurisdictional/Dispositional Hearing Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050310v0409.doc>

This procedural guide was revised to reflect recent legislation regarding incarcerated and or institutionalized parent/legal guardian, a child's right to be noticed and given an opportunity to attend a court hearing, consideration of the criminal history of a parent, and the period of time that court-ordered services be provided for a child who on the date of initial removal was under three years of age. Also, instructions were added regarding how to access the Recommendations Guide, as well as how to provide more detailed information regarding visitation, Hub referrals and psychotropic medications. (SA)

0300-503.16 (REV) Writing the WIC 366.3 Status Review Hearing Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050316v0409.doc>

This procedural guide was revised to reflect recent legislation regarding incarcerated and or institutionalized parent/legal guardian, a child's right to be noticed and given an opportunity to attend a court hearing, consideration of the criminal history of a parent, the period of time that court-ordered services be provided for a child who on the date of initial removal was under 3 years of age, and that family maintenance services may be ordered at a WIC 366.3 hearing. Also, instructions were added on how to access the recommendations print report, how to provide more detailed information regarding visitation and psychotropic medication, HUB referrals, and how to provide active efforts for an Indian child. (SA)

0300-503.41 (REV) WIC 388 Petitions: Response Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050341v0409.doc>

This procedural guide was revised to reflect recent legislation regarding incarcerated and or institutionalized parent/legal guardian, a child's right to be noticed and given an opportunity to attend a court hearing, consideration of the criminal history of a parent, and filing a WIC 388 petition when terminating family reunification services prior to the WIC 366.21 (e) and (f) hearing. Also, instructions were added on how to access the Recommendations Guide, how to provide active efforts for an Indian child, and how to provide more detailed information regarding visitation and psychotropic medications. (SA)

0300-506.07 (REV) Informal Discovery Requests

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050607v0409.doc>

This procedural guide was updated with minor changes, including the County Counsel Front Desk telephone number, instructions on locating County Counsel's email address in LA Kids, and a reference to Procedural Guide 0300-506.05 "Conversations with Outside Counsel and other Non-DCFS Individuals." (SA)

0400-504.00 Family Visitation Planning

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0400/040050400v0409.doc>

This procedural guide provides specific tools, protocols, and strategies for CSWs to follow to ensure that planned and purposeful visitation occurs for children and families. (SA)

0400-504.45 (REV) Supervised Visits

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0400/040050445v0409.doc>

This procedural guide was revised to incorporate the standards for supervised visitation as set forth in the California Rules of Court, to clarify the mandated time frames for visits and levels of visits, and to add information on how the Family Visitation Plan requirements regarding supervised visits are to be addressed. Finally, forms DCFS 5120 and 5121 have been revised to more clearly reflect the standards set for supervised visitation as set forth in the California Rules of Court. (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/0600/060051410v0309v2.doc>

This procedural guide was revised to address the protocol for reviewing and monitoring new psychotropic medication or an increase in dosage of current medication. (SA)

