



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA

In re Jeremiah G.--filed April 14, 2009, Third Dist.

Docket No: C058223

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/C058223.DOC>

After detention, but before adjudication/disposition, father was declared a presumed father. On that day, he was asked if he had any Native American heritage, and he replied, “That’s a possibility. That needs to be researched. My great grandfather was Indian. I don’t know if he was part of a tribe or not.” On the Form JV-130, he indicated he “might” have Indian ancestry. Thereafter, father filled out a second JV-130 form stating that he did not have any Native American heritage. At the subsequent dispositional hearing, father clarified that although he had initially thought he might have Indian heritage, he had since retracted that statement. Noting that neither parent was claiming Native American heritage, the juvenile court found that the child was not an Indian within the meaning of the ICWA. Mother appealed from the dispositional hearing (at which the court denied her family reunification services), on the grounds, among others, that the trial court erred in issuing dispositional orders without providing notice of the hearing to the appropriate Indian authorities as required by the ICWA.

Affirmed. In a juvenile dependency proceeding, a claim that a parent, and therefore a child, “may” have Native American heritage is insufficient to trigger ICWA notice requirements if the claim is not accompanied by other information that would reasonably suggest that the minor has Indian ancestry. This is particularly true in this case, where father retracted his initial statement that he “might” have Indian ancestry. (PB)

VISITATION WITH A PARENT; WIC 362.1(a)(1)(B)

In re C.C.- filed April 13, 2009, Second Dist., Div. Seven

Docket No. B208675

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B208675.DOC>

C.C. was detained from his mother because of emotional and physical abuse and the court ordered monitored visits for the mother. At an initial jurisdiction hearing, the court changed the order to visitation in a therapeutic setting because C.C. became extremely upset during visits and refused to visit. The court subsequently terminated visits after C.C. threatened to harm himself if forced to visit and both his therapist and visitation monitor indicated visits were detrimental. However, after the first Evidence Code 730 evaluator attributed C.C.'s distress to the parents' conflicts and opined that allowing him to control visitation was contributing to his turmoil, the court again ordered visits in a therapeutic setting. The court also received a report from a second Evidence Code 730 evaluator indicating the first evaluation was based on misinterpreted data. The court again suspended conjoint therapy after C.C. had a disastrous monitored visit with his mother, refused to continue conjoint sessions after participating in several sessions, and the conjoint therapist acknowledged that it would only be effective if C.C. was willing to participate. At the disposition hearing, the court found further visitation would be detrimental to C.C. and suspended visitation based on C.C.'s age, and information from his therapist and conjoint therapist. Mother appealed.

Reversed. Although the juvenile court granted the father sole legal and physical custody, ordered monitored visits for the mother, and terminated jurisdiction while the appeal was pending, the Court of Appeal did not dismiss the appeal as moot because dismissal would be equivalent to affirming the juvenile court's order. Regarding the merits, under WIC 362.1, when reunification services have been ordered and are still being provided, as they were in this case, visitation with the parent is a mandatory element of reunification *unless the court specifically finds that visitation with the parent would pose a threat to the child's safety*. Here, the juvenile court made extraordinary efforts to balance C.C.'s well-being with his mother's interest in his care, custody, and companionship by repeatedly postponing disposition to obtain further therapeutic assessments on the impact of the visitation, and by carefully considering the expert reports and testimonies. However, suspending visitation based on a finding of detriment was the incorrect standard for the court to apply. The appropriate standard under WIC 362.1(a)(1)(B) was whether there was substantial evidence that the visitation posed a threat to C.C.'s safety. (SA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-18 Electronic Suspected Child Abuse Report System (E-SCARS) Implementation

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0918Escars.doc>

This FYI is to notify staff that Phase 1 of the new Electronic Suspected Child Abuse Report System (E-SCARS) was implemented on April 13, 2009. E-SCARS is a web-based system developed by DCFS's Business and Information Systems Division, as part of a joint effort by DCFS, the District Attorney and the Sheriff's Department. E-SCARS allows rapid and secure electronic transmission and receipt of Suspected Child Abuse Reports (SCARs) between DCFS, the District Attorney, the Sheriff's Department and other independent law enforcement agencies within Los Angeles County. It facilitates compliance with the Child Abuse and Neglect Reporting Act (P.C. 11164), which requires: 1) DCFS and law enforcement to mutually cross-report allegations of suspected child abuse and/or severe neglect; and 2) the District Attorney to audit cross-reporting compliance between DCFS and the law enforcement agencies in the county. E-SCARS will facilitate a timely response to sensitive cases, consolidate reports from multiple mandated-reporters, provide case-tracking capability, expedite criminal investigation, and enhance prosecution. (SA)

09-19 Forms Posting Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0919FormsUpdate.doc>

This FYI is to provide staff with an update to the posting of new/revised forms to LA Kids and to the CWS/CMS (LA County specific templates) since the release of FYI 09-14, issued 3/25/09. (SA)

Procedural Guide:

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

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052035v0409.doc>

This procedural guide was revised to reflect the proper forms/documentation needed for Kin-GAP. It was also revised to clarify and add information related to Kin-GAP, including the dual agency rate, Supplemental Security Income (SSI), and Independent Living Program (ILP). It also clarified the timeframe and responsibilities related to the DI writing the court report. In addition, form DCFS 5555 and information on ILP attachments were removed from this procedural guide. Form DCFS 5555 is now available through the Forms section on LA Kids and the ILP information can be found in a referenced related policy. (SA)

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