



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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Written by: Martha Matthews (MM), Jenny Cheung (JC), Patricia Bell (PB) and Sophia Ali (SA)

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NEW DEPENDENCY CASE LAW

FAMILY CODE § 3041

In re E.S. – filed May 8, 2009, Fourth Dist., Div. One

Docket No. D052768

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D052768.DOC>

Father challenged an order of the Superior Court which awarded permanent sole physical and legal custody of his daughter to the aunt and uncle and allowed him supervised visitation. The aunt and uncle were the child's primary caretakers since birth and father agreed E.S. should stay in their stable home. When E.S. was 5 years old, father petitioned the court for custody but professionals involved in the case concurred that father was not prepared to assume full custody and that it would be detrimental to move E.S. Father argued that section 3041 was unconstitutional because it allowed non-parental custody without a finding of parental unfitness.

Affirmed. Family Code § 3041 provides that before granting custody of a child to a non-parent over the objection of a parent, the court must find that custody to a parent would be detrimental to the child and that custody to the non-parent is in the best interest of the child. The finding of detriment must be supported by clear and convincing evidence, but does not require a showing of parental unfitness. Section 3041 provides that if a preponderance of the evidence shows a non-parent has assumed the parental role for a substantial period of time by providing a stable home where the child's physical and emotional needs are met, then the required showing that non-parental custody is in the child's best interest and that parental custody would be detrimental is established. This presumption however is rebuttable, and the parent may refute the evidence supporting custody with a de facto parent by showing by a

preponderance of the evidence that there would be no detriment from parental custody and that non-parental custody is not required to serve the child's best interest. (JC)

ICWA

In re K.B. et al. — filed May 13, 2009, Fourth Dist., Div. Two

Docket No: E046005

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/E046005.DOC>

Ka.B., Kr.B. and D.B. and their half-sister Ke.B. were the subjects of a dependency proceeding initiated in 2001 and terminated in December 2003, with the four children being returned to the mother's custody. The father of Ka.B. and Kr.B. (the appellant father in this appeal, hereafter "father") was in prison on drug charges, and the whereabouts of Ke.B.'s father were unknown. Father was released during the pendency of this proceeding, but because of a prior conviction for lewd and lascivious acts on a child under the age of 14, his parole conditions forbade contact with minors, including his own children. The current petition was filed on March 9, 2004, and alleged that father was living with the family in violation of his conditions of parole, had molested Ke.B. and that mother knew or should have known the children were at risk of sexual abuse. Parental rights were terminated, and father appealed. The court of appeal reversed the termination order and remanded the cause for the limited purpose of providing notice to the appropriate tribal authorities under the ICWA. Following remand, it was determined that the children had Choctaw heritage and the ICWA applied. At the second hearing on the termination of parental rights, the court determined that the substantive requirements of the ICWA had been met. The court thereafter terminated parental rights and ordered a permanent plan of adoption by the children's current caretakers. The parents appealed, on the grounds among others that the substantive provisions of the ICWA had not been met.

Affirmed. There was no need to make "active efforts" to offer remedial services to the father or the mother before placing the children in foster care, since under the circumstances of this case, no reasonable court would have placed the children with either parent. Further, the trial court's finding at the section 366.26 hearing that "active efforts" had been made to prevent the break-up of the family was supported by substantial evidence. There is no "pat formula" for distinguishing between "active" and "passive" efforts; however, in general, passive efforts are where a plan is drawn up and the client must develop his or her own resources to bring it to fruition, and active efforts are where the caseworker takes the client through the steps of the plan. (PB)

WIC 360(a) GUARDIANSHIPS

In re G.W. — filed May 19, 2009, Fifth Dist.

Docket No: F056246

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/F056246.DOC>

Mother gave birth to six children by two fathers. In 2004, the family court gave legal guardianship of the three oldest children to maternal grandfather and step grandmother. The

legal guardianship was terminated in 2006 because of grandfather's criminal history. The children were returned to mother. In 2006, the county agency filed a section 300 petition, and the children were detained. The trial court sustained the petition and the children were placed in foster care. At the 18 month hearing, the children were returned to mother; however, less than one month later, a supplemental petition under section 387 was filed, and all of the children were once again detained. The juvenile court sustained the allegations in the petition, and appointed the step grandmother the legal guardian under the provisions of WIC 360(a). This was apparently done because of grandfather's criminal conviction and the limitations imposed by WIC 361.4. The county agency appealed the order appointing the step grandmother legal guardian.

Reversed. When a supplemental petition is filed, the case does not return to "square one." Here, mother had already received 18 months of services. At this stage of the case, the only option left for the court at the dispositional hearing was to proceed the section 366.26 hearing as required by California Rule of Court 5.565(f). The trial court was required to comply with the provisions of WIC 361.4. (PB)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-22 Referrals To The Asian Pacific Program

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0922AsianPacific.doc>

This FYI, which cancels FYI 08-57 "Referrals to the Asian Pacific Program" dated 12/8/08, advises staff of the Asian Pacific languages the Asian Pacific Program is staffed to provide services to. The languages include, Cambodian, Chinese Cantonese, Chinese Mandarin, Japanese, Korean, Laotian, Hmong/Mong, Vietnamese, and Tagalog. The Asian Pacific Program currently does not have staff for any other Asian Pacific languages. (SA)

09-23 Update On ICWA Notices

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0923ICWANoticeUpdate.doc>

This FYI is to advise staff that the Federal Register's list of designated agents for service of ICWA notice has been updated (04/28/09). To obtain the address and name of the designated agents for service of ICWA notice, refer to that portion of the Federal Register maintained by the BIA at <http://edocket.access.gpo.gov/2009/pdf/E9-9644.pdf>. To ensure that legally sufficient notice is achieved, notices must be sent to the individuals and addresses in the list of designated agents for service. In order to ensure proper ICWA notice, CSWs are to contact the ICWA specialist attorneys when preparing ICWA notices. See Procedural Guide 1200-500.05, The Indian Child Welfare Act, for detailed instructions on completing ICWA notices. (SA)

Procedural Guides:

0050-501.15 (REV) The Cross-Reporting Responsibilities When a Report of New Allegations is Received at the Child Protection Hotline

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050115v0509.doc>

This procedural guide was revised to reflect the current practice of electronically transmitting Suspected Child Abuse Reports (SCARs) via E-SCARS for all 23 LA County Sheriff's stations, Law Enforcement Agencies outside of Los Angeles County, and the Los Angeles County District Attorney's office. By January 2010, E-SCARS will be fully implemented and is to be used to transmit SCARs to all Law Enforcement Agencies within and outside of Los Angeles County, to the Los Angeles County District Attorney, and to the Los Angeles City Attorney. (E-SCARS is a web-based system which allows rapid and secure electronic transmission and receipt of SCARs between DCFS, the District Attorney, the Sheriff's Department and other independent law enforcement agencies within Los Angeles County. It also facilitates compliance with the Child Abuse and Neglect Reporting Act.) (SA)

0050-501.25 (REV) Child Protection Hotline (CPH): Referrals Regarding Children Abused Or Neglected in Out-of-Home Care Who are Under DCFS Supervision

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050125v0509.doc>

This procedural guide was reformatted and simplified to provide the Child Protection Hotline staff with more detailed instructions for when they receive a referral alleging abuse or neglect in out-of-home care. (SA)

0050-503.55 (REV) Referrals Regarding Children of Military Personnel

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050355MilitaryV0509.doc>

According to this procedural guide, the Family Advocacy Office at the Los Angeles Air Force Base in partnership with DCFS investigates all allegations of abuse and neglect regarding children of military personnel in Los Angeles County. The goal of this partnership is to ensure communication is maintained between the Los Angeles Air Force Base and DCFS regarding the identification, reporting and investigating of suspected child abuse and neglect cases that involve active duty military families. This procedural guide was revised to reflect the current agreement between Los Angeles Air Force Base and DCFS, which was renewed earlier this year. (SA)

0050-503.80 (REV) Infants Prenatally Exposed to Drugs and/or Alcohol Supervision

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050380v0509.doc>

This procedural guide updated the instructions for the Child Protection Hotline staff to follow when they receive a report of an infant prenatally exposed to drugs and/or alcohol. (SA)

0050-503.85 (REV) Sensitive Referrals/Cases

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050385Sensitivereferralsv050.doc>

This procedural guide was revised a second time to indicate that all Child Protection Hotline SCSWs will have sensitive and sealed access. (SA)

0070-524.00 (REV) Assessment of a Parent's Failure to Protect by Failing to Provide a Child With Adequate Shelter

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007052400v0509.doc>

This procedural guide was updated with the current practice for social worker's to follow when assessing a parent for parental incapacity prior to detaining a child. (SA)

0070-548.06 (REV) Emergency Response Referrals Alleging Abuse of Children Who are Under DCFS Supervision and Residing in the Home of a Parent

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054806v0509.doc>

This procedural guide was updated to reflect the current requirement that a CSW who is investigating an emergency response referral alleging abuse of children currently under DCFS supervision mail forms SOC 832, 833, and 834 to the indentified perpetrator when the allegations are cross reported to the DOJ. (SA)

0100-502.52 (REV) Grievance Review Regarding Placement/Removal of a Child From a Foster Family Home, or Denial of Home Approval for a Relative/Non-Relative Extended Family Member Home

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010050252GrievanceReviewV0509.doc>

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This procedural guide changed amount of time the RA has to locate a Review Agent from 10 days to 2 days to ensure the Review Agent has adequate time to prepare for the Grievance Review Hearing. It also added instructions for the RA to provide a copy of the Complainant's 4161 to the Review Agent as soon as (s)he is located. Finally, it added reference information regarding removal of legally freed children whose foster parent or relative can be designated as the prospective adoptive parent. (SA)

0100-525.41 (REV) Wraparound Approach

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052541v0509.doc>

This procedural guide was updated to reflect the current practice of the Wraparound program. (On May 1 2009, Wraparound expanded its target population to include any child/youth with an open DCFS case (either voluntary or court), who qualifies for Early and Periodic Screening Diagnostic and Treatment (EPSDT) and has an urgent and/or intensive mental health need which causes impairment at school, home and/or in the community (Now known as Tier II Wraparound).) (SA)

0300-303.08 (REV) Detention/Release: Unifying the Recommendation Prior to the Detention Hearing

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030308v0509.doc>

This procedural guide has been revised to reflect current procedures for detaining/releasing children before the detention hearing: [between IDC and Emergency Response and Command Post (ERCP) and between IDC and Regional staff]. Other changes reflect the duties of the ERCP Trouble Shooter who is responsible for any contacts related to the status of taking children into temporary custody or releasing children before the detention hearing. (SA)

0300-503.20 (REV) Writing the WIC 366.26 Hearing Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050320v0509.doc>

This procedural guide was revised to reflect recent legislation regarding incarcerated and or institutionalized parent/legal guardian, and child's right to be noticed and given an opportunity to attend a court hearing. It also clarifies the timeframe and responsibilities related to the DI writing the court report. Instructions were added/revised regarding how to access the Recommendations Guide and on how to provide more detailed information regarding visitation, Hub referrals, and psychotropic medications. (SA)

0900-522.10 (REV) Specialized Care Increment (SCI) - D-Rate

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090052210Dratev0509.doc>

Among other non-substantial changes, this procedural guide was revised to indicate that reassessments of the D-Rate will occur annually rather than every six months. (SA)

1000-501.30 (REV) Dependency Investigation (DI) Assignment Criteria

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1000/100050130DIAssv0509.doc>

This procedural guide was revised to incorporate recent legislation regarding filing a WIC 388 petition when terminating family reunification services prior to the WIC 366.21 (e) and (f) hearing and also to add instructions related to Concurrent Planning Redesign. (SA)

1200-500.10 (REV) Obtaining Vital Records (Birth, Death, Marriage and Divorce)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050010VitalRecordv0509.doc>

This procedural guide was updated with revised instructions to direct DCFS staff to check the case-file, Revenue Enhancement Vital Records tracking log in LA Kids in “The Site,” and CWS/CMS before making a request for a birth certificate in order to prevent duplicate requests. Further, the procedure on how to obtain a birth certificate of a foreign-born child has been updated. (SA)