



# 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**

#### **APPELLATE PROCEDURE**

*In re Anna S.*--filed January 13, 2010, Fourth Dist., Div. One

Docket No. D055036

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D055036.PDF>

After a three year dependency, child's case was scheduled for a WIC 366.26 hearing. On the day of the hearing, the trial court granted mother's 388 petition and returned child to her. Child appealed. The court of appeal reversed, holding there was not sufficient evidence to support the granting of the petition. After the court of appeal's reversal, but before the remittitur issued, child's counsel filed a section 388 petition to have the child detained. Relying in part on the non-final court of appeal decision, the trial court granted the child's section 388 petition and detained the child. Mother appealed, on the grounds that the trial court was not permitted to rely on the court of appeal's decision until the remittitur issued. After mother filed her notice of appeal, the remittitur in the original appeal was issued.

Dismissed as moot. When the remittitur issued in the original appeal, the order granting mother's 388 petition was reversed and the county agency regained custody of child for placement in foster care. This intervening event rendered moot the validity of the trial court's subsequent granting of child's section 388 petition. However, because of the recurring nature of the problem, the court of appeal discusses the pertinent points of appellate procedure. Once a court of appeal issues a decision, the order of the reviewing court is retained in its remittitur. Until the remittitur issues, the trial court can not act upon the reviewing court's decision. However, even after the remittitur issues, the trial court must implement the final appellate directive in view of the family's current circumstances and any developments in the

dependency proceedings that may have occurred during the pendency of the appeal. No matter the status of any related appellate proceeding, the juvenile court has the authority and duty to act to protect the safety of the child. In this case, the trial court should have decided the child's 388 petition based on current circumstances. (PB)

**RELINQUISHMENT OF PARENTAL RIGHTS; Fam. Code 8700(f).**

*In re I.W.* – filed Dec. 15, 2009, ordered published Jan. 13, 2010, Sixth Dist.  
Docket No. H034129

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/H034129.PDF>

Three children were removed from mother due to physical abuse and mother's drug use and incarceration. Mother was in and out of jail during the next two years, and tested positive for drugs at the time of the WIC 366.26 hearing. The two oldest children, when they learned of mother's relapse, indicated they were willing to be adopted. The court found that all three children were likely to be adopted, and terminated parental rights, even though the oldest child had special needs, basing this finding on the foster parents' willingness to adopt all three children. Mother appealed.

Affirmed. The juvenile court did not err in considering the foster parents' willingness to adopt I.W. as evidence of his general adoptability, nor in terminating parental rights even though the foster parents' home study had not yet been approved. An approved home study is required before termination of parental rights only in cases where the child is not generally adoptable (e.g. because of a severe disability), and can only be found 'specifically adoptable.' The court also did not err in rejecting mother's claim that the beneficial relationship exception, WIC 366.26(c)(1)(B)(i), applied. So long as the juvenile court's finding is supported by substantial evidence, the court of appeal will not reweigh conflicting evidence. Mother's ICWA claim fails because the agency substantially complied with ICWA despite minor, technical defects in the notices. (MM).

**NON DEPENDENCY CASES OF INTEREST**

**IN-SCHOOL SEIZURES- *Interviewing Suspected Child Abuse Victims at School***

*Greene v. Camreta.*- filed December 10, 2009, 9<sup>th</sup> Circuit Court of Appeals.  
Docket No. 06-35333 / D.C. 05-06047- AA

Link to case:

Without a warrant or other court order, a caseworker from Oregon Department of Human Services spent two hours interviewing S.G. at school regarding sexual abuse allegations against her father. A police officer accompanied the caseworker but did not ask any questions. Mother was not informed of nor consented to the interview. The juvenile court detained S.G. and her sister based on false information from the caseworker that mother would not be willing to keep the children away from the father after his release from jail. According to the mother, she did not tell the caseworker that the father could not leave the family home. Subsequently during a medical sexual abuse examination of the children, staff

at the examination site did not allow mother to be present during the examination but instead forced her to leave the premises on order of the caseworker. Mother filed suit in district court and the court granted summary judgment to the caseworker and officer. Mother appealed alleging that the in-school seizure without a warrant, parental consent, probable cause, or exigent circumstances violated the Fourth Amendment. She further alleged that the social worker violated the family's due process rights under the Fourteenth Amendment by intentionally presenting false information to the juvenile court to obtain a removal order and by interfering with the family's right to be together during the sexual abuse examination.

Reversed in part and affirmed in part. Seizing and interrogating S.G. without a warrant, court order, exigent circumstances, or parental consent was unconstitutional. When law enforcement is directly involved in an in-school seizure and interrogation of a suspected child abuse victim, the Fourth Amendment requirements must be followed. Here, the law enforcement personnel were too deeply involved in the seizure. Not only were the police conducting an ongoing investigation of father, but in Oregon the law enforcement agency is allowed to investigate child abuse referrals, detain children, and essentially remain in contact with Department officials throughout investigation of the referral. However, the caseworker and officer cannot be held liable for damages because even when government officials violate a citizen's constitutional rights, the doctrine of qualified immunity protects them from liability as long as they could have reasonably but mistakenly believed that their conduct did not violate a clearly established constitutional right. Further, summary judgment for the removal order is reversed as there is a genuine issue of material fact as to whether the caseworker secured the order by misrepresenting his conversation with mother to the court. A family has a clearly established right to be free from judicial deception in securing a removal, and therefore, the caseworker is not entitled to qualified immunity for a removal based on false representations to the court. Finally, summary judgment regarding exclusion of mother from the medical examination is reversed because under the Fourteenth Amendment, families have clearly established familial rights to be with each other during potentially traumatic medical examinations. While this right to be present in the exam room during the actual procedure may be limited for a valid reason, the parents still have a right to be present at the examination site. (SA)

## **OTHER LEGAL DEVELOPMENTS**

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

#### **For Your Information (FYIs):**

10-06      Conducting School Interviews

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1006SchoolInterviews.doc>

This FYI, which was released in response to *Greene v. Camreta* (published 12/10/09 by 9<sup>th</sup> Circuit Court of Appeal), lists guidelines for CSWs to follow when interviewing children on school grounds. According to the FYI, without a warrant, parental consent, or the consent of a child over 12, CSWs shall:

1. limit in-school interviews to approximately 30 minutes or less and only extend the time if necessary to protect the child from an imminent risk of harm which would likely occur in the time it would take to get a warrant, and
2. not interview the child at school in the presence of law enforcement unless it is necessary to prevent imminent risk of harm to the child.

### **Procedural Guides:**

0050-503.20 (REV) Child Protection Hotline (CPH): Classification of Allegations

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050320v0110.doc>

This procedural guide was revised to reflect that users of CWS/CMS no longer have the ability to select “Substantial Risk” as an allegation type. It further clarified the definitions of “general neglect” and “severe neglect,” and expanded the list of categories of allegations that do not constitute appropriate child abuse referrals / a basis for intervention. (SA)

0070-561.10 (REV) Live Scan and California Law Enforcement Telecommunications System (CLETS) Clearances

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007056110v0110.doc>

This procedural guide was updated with information from FBI guidelines regarding primary and secondary identification sources at the Live-Scan site which allows for completion of Live-Scan without a photo ID. Further, it was updated to notify social workers that a note regarding subsequent arrest notification is no longer required when a relative caregiver has been granted Kinship Guardianship or at the time an adoption has been finalized on. (SA)

0080-502.10 (REV) Initial Case Plan

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050210v0110.doc>

This procedural guide was revised to reflect recent legislation (SB 118 and SB 597) which requires that information about a parent’s incarceration be included in the case plan and that the case plan address a child’s educational stability while in foster care. (SA)

0100-580.00 (REV) Youth Permanency Unit Pilot Program

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010058000PermUnitpolicyv0110.doc>

This procedural guide was revised to reflect that the initial Youth Permanency (YP) meeting shall be held 90 days from the unit’s case receipt, that follow-up meetings shall occur at least once every 6 months unless another team meeting that includes the youth has occurred in the interim and the YP CSW and SCSW have agreed to hold it less frequently. The procedural guide clarifies who can and who must attend the meeting, updates the leadership entities over the YP Unit, and revises the case transfer criteria to

make “no or limited family connections” as a mandated criterion for all cases being assigned to the YP Unit. (SA)

#### 0300-301.06 Non-Detained Petitions

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030106nondetainedv0110.doc>

This procedural guide provides social workers with guidelines for maintaining a child safely in the home of the parents with judicial supervision in lieu of removing the child. (SA)

#### 0300-303.06 (REV) Hospital Holds

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030306v0110.doc>

This procedural guide was updated to reflect the current practice regarding placing a child on a "hospital hold" and to inform social workers that because placing a child on a hospital hold is the same as taking the child into temporary custody, they must either have exigent circumstances, parental consent, or a court order that supports the removal of a child at risk of abuse or neglect (detention warrant) prior to placing a child on a hospital hold. (SA)

#### 0300-306.75 (REV) Due Diligence

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030675V0110.doc>

This procedural guide was updated with new procedures for social workers to use to request probation records. (SA)

#### 0600-500.00 (REV) Utilization of Medical Hubs

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050000v0110doc.doc>

This procedural guide was revised to reflect the Ninth Circuit Court of Appeals ruling in *Greene v. Camreta*, 588 F.3d 1011 (9<sup>th</sup> Cir. 2009), which held that government officials cannot exclude parents entirely from the location of their child's physical examination absent parental consent, some legitimate basis for exclusion, or an emergency requiring immediate medical attention. (SA)