



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

Vol. 6, No. 3 February 11, 2010

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

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

© 2010 by Children's Law Center of Los Angeles (“CLC”). All rights reserved. No part of this newsletter, except those which constitute public records, may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing from CLC. Cases reported may not be final. Case history should be checked before relying on a case. Cases and other material reported are intended for educational purposes only and should not be considered legal advice.

For more information on Children's Law Center, please visit our website at [www.clcla.org](http://www.clcla.org).

### **NEW DEPENDENCY CASE LAW**

#### **ADOPTABILITY; WIC 366.26**

***In re G.M.*** – filed Jan. 27, 2010, Fifth Dist.

Docket No. F057848

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F057848.PDF>

Two children were placed with maternal great-aunt due to mother's drug use. At the WIC 366.26 hearing, the children were 9 and 7 years old and had lived with the aunt for several years. The agency's report stated that the children were 'generally adoptable' in that they were healthy and had no developmental problems, and they had a strong attachment to the aunt. Mother opposed the plan of adoption on the basis that the aunt's "lifestyle" was inappropriate. The court allowed mother's counsel to elicit testimony that the aunt was separated but not divorced, but sustained objections to further questions about the aunt's living situation and relationship with her husband. The court terminated parental rights and selected adoption as the permanent plan. Mother appealed.

Affirmed. A prospective adoptive parent's *legal eligibility* to adopt is relevant at the WIC 366.26 hearing, when the caseworker's opinion that the child is adoptable is based at least in part on the availability of a specific adoptive home. So, whether the aunt was still married, and if so whether she would be able to obtain spousal consent to adoption, was relevant. However, issues of a prospective adoptive parent's suitability to adopt (e.g. whether her "lifestyle" was appropriate) are properly excluded at a WIC 366.26 hearing, so that the hearing does not degenerate into a subjective attack on the prospective adoptive parent. In this case, the juvenile court properly allowed questions about marital status, and properly

excluded questions about lifestyle and suitability. Moreover, the finding of adoptability was not based solely on the aunt's willingness to adopt. (MM)

## **ICWA; MARSDEN MOTIONS**

*In re Z.N.*--filed December 29, 2009, pub. order January 10, 2010, First Dist., Div. Two  
Docket No. A12483

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A124843.PDF>

Four of mother's children were removed from mother in 2006, and children were placed in foster care, where they remained until the WIC 366.26 hearing, held two and a half years later. At the start of the hearing, mother's counsel raised a "McKenzie" motion to be relieved as counsel, and mother raised a "Marsden" motion to change counsel. The court denied the motions, and ordered the hearing to go forward. The court then terminated parental rights. Mother appealed, on the grounds that the failure to grant the motions constituted "structural error," requiring reversal. Mother also argued that ICWA notice was inadequate, also requiring reversal.

Affirmed. There was no abuse of discretion in denying substitution, and even if there was, the error was not prejudicial, even assuming the heightened federal constitutional standard of harmless beyond a reasonable doubt. The error did not constitute "structural error." With respect to the ICWA issue, even if the ICWA notice was inadequate, the error was not prejudicial. The appellate court may take judicial notice of matters not before the trial court to determine whether the error was prejudicial. In this case, records available relating to the half sibling's case indicate that there is no reasonable probability of a different result in this case, absent the notice error. (PB)

## **JURISDICTION**

*In re J.N.*--filed February 4, 2010, Sixth Dist.

Docket No. H034242

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/H034242.PDF>

Juvenile court sustained a petition brought pursuant to WIC 300, subdivision (b). Mother and father were both convicted of child endangerment after children were injured in a car accident in which father was found to driving while intoxicated. Both parents appealed the jurisdictional findings of the court, arguing that there was no evidence that at the time of the jurisdictional hearing, the children were at substantial risk of serious physical harm.

Reversed. Although at least one of the children suffered serious physical injury at the time of the accident, in order to exercise jurisdiction the evidence must show *current* risk. The Court of Appeal disagrees with *In re J.K.* (2009) 174 Cal.App.4th 1426, to the extent that it concludes that section 300, subdivision (b) authorizes dependency based on a single incident resulting in physical harm, absent current risk. In this case, substantial evidence did not support the finding of current risk. (PB)

## LEGAL GUARDIANSHIP VISITATION ORDERS

*In re Rebecca S. et al.*- filed February 8, 2010, Second Dist., Div. One

Docket No. B216227

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B216227.DOC>

At WIC 366.26 hearing, court appointed maternal aunt the legal guardian of the children and ordered monitored visits for the parents. However, it gave the guardian the responsibility to arrange the frequency, location, duration, etc. of the visits, ordering that the children's well-being be taken into consideration. Father did not object to the visitation order but subsequently appealed.

Reversed. Although father waived the visitation issue by failing to raise it in the trial court, when the appeal raises only a question law and can be decided based on undisputed facts, the Court of Appeal has discretion to decide the appeal. Regarding the merits, although the guardian may be given discretion to decide the time, place, and manner of the visits, allowing the guardian to decide the frequency, duration, and location is an abuse of discretion because it allows the guardian to determine whether visits will actually occur. Because the trial court had determined that visitation with father is appropriate, scheduling the frequency and duration of the visits ensures that the court's goal of maintaining the parental relationship will occur. (SA)

### **NOTICE TO AND RIGHT OF MINORS TO ATTEND HEARINGS; WIC SECTIONS 349; 366.26(h)(2); and 294(a)(3)**

*In re Desiree M. et al.*- filed January 26, 2010, Fourth Dist., Div. One

Docket No. D055670

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D055670.DOC>

Court set WIC 366.26 hearing for May 20, 2009. Minors were given notice of hearing which informed them that the agency was recommending that parental rights be terminated. The hearing was continued to July 17, 2009 but the agency's recommendation did not change. Minors were not present in court on July 17, 2009 but their counsel was present and notified the court that both girls wanted to be adopted by their aunt/caretaker. The court found notice findings had been made and preserved, then terminated parental rights. Mother appealed, claiming that minors were not properly notified of the continued hearing and that the juvenile court did not make the statutorily required inquiry into the reason for their absence from that hearing.

Affirmed. Mother not only forfeited her right to raise the issue by failing to raise it in the trial court, but she also lacks standing because she was not injuriously affected by the court's order. Regardless, mother would not prevail on the merits. While WIC 294(a)(3) requires the agency to provide notice of the WIC 366.26 hearing to a child 10 years or older, subsequent notice for a continued WIC 366.26 hearing may be made by any means the court determines is reasonably calculated, under any circumstance, *unless* the agency's recommendation changes. Minors were given notice of the initial WIC 366.26 hearing. Regarding notice for

the continued hearing, as the agency did not change its recommendation to terminate parental rights, the court could have “reasonably” found that notice to minor’s counsel, who was present when the court continued the WIC 366.26 hearing and likely notified the minors, constituted a means reasonably calculated to provide minors notice. Further, while when a minor 10 years or older is not present at a hearing the court is required to inquire why the minor is not present, whether the minor was properly notified of his/her right to attend, and whether minor was given an opportunity to do so, here not only did the court previously inform minors of their right to attend the hearings but notice to minor’s counsel of the continued hearing was sufficient to notice to the minors. (See WIC 349 & 366.26(h)(2).) Thus, any error is harmless. (SA)

### **OTHER LEGAL DEVELOPMENTS**

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

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

10-08 Notification of Affirmative Action/Civil Rights Compliance Coordinator Change

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1008AffirmativeActionCivilRightsCoordinator.doc>

This FYI was updated with information for DCFS employees and parents on filing complaints if they feel they have been discriminated against based on race, color, religion, sex, national origin, political affiliation, disability, age, sexual orientation, marital status, or gender identity. (SA)

10-09 Civil Rights PUB 13 Pamphlet

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1009CivilRightsPamphletPub13.doc>

This FYI is to remind CSWs that the pamphlet, “Your Rights Under California Welfare Programs” shall be distributed to DCFS clients at the initial contact of all Emergency Response referrals. In addition, clients should continue to receive the DCFS 2457, “Civil Rights Information Form.” (SA)

10-10 Health and Education Passport - Court Report Implementation

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1010HEPCourtReports.doc>

This FYI is to update CSWs that now they are allowed to attached the Health and Education Passport (HEP) to court reports in lieu of the narratives for medical, dental, education, developmental and mental health status currently being submitted for court’s review. All prior court expectations for updates on a child’s health and well-being are still required for the court’s review and must be reflected in the attached HEP, per Procedural Guide 0080-505.20, Health and Education Passport. The information included must be limited to reports and summaries from agencies and experts in their particular fields; ie, physician’s reports, clinic reports, therapist’s reports, Regional

Center annual reports, and IEP plans. Additional pertinent information from observers who are not expert in the field being reported should be included in the Current Family Circumstances portion of the reports to the court. (SA)

10-11 Policy Clarification: Collateral Contacts

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1011CollateralContacts.doc>

This FYI was released to notify CSWs that they are now required to conduct an emergency response investigation to contact **all pertinent** collateral contacts that will help in understanding the nature and extent of the alleged child abuse/neglect and in assessing the risk to and safety of the child. The following collateral contacts are required: For children between the ages of 0-59 months, a collateral contact with at least one professional such as a licensed day care provider, pediatrician, etc. For each school age child, a collateral contact with educational professionals. For sexual abuse, physical abuse, and severe neglect referrals, a collateral contact with law enforcement. For referrals with an open case or history of open cases or referrals, collateral contacts with the current/previous CSWs. (SA)

### **Procedural Guides:**

0070-548.07 (REV) Assessing for the Safety and Risk of Newborns for Families  
Already Under DCFS Supervision

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054807v0110.doc>

This procedural guide updated the instructions for CSWs to follow regarding their duties to assess the well-being of a child born to a mother already on the CSW's caseload. (SA)

0070-548.10 (REV) Disposition of the Allegations And Closure of the Emergency  
Response Referral

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054810v0210.doc>

This procedural guide was updated with the following instructions for CSWs:

- all pertinent collaterals shall be completed and there should be no less than 3 pertinent collateral contacts per referral,
- the following collateral contacts are required: for children between the ages of 0-59 months, a collateral contact with at least one professional such as a licensed day care provider, pediatrician, etc.; for each school age child, a collateral contact with educational professionals; for sexual abuse, physical abuse, and severe neglect referrals, a collateral contact with law enforcement; and for referrals with an open case or history of open cases or referrals, collateral contacts with the current/previous CSWs.
- CSWs are to review the previous DCFS history, including any history of an adult as a minor, and this information shall be evaluated by the CSW and SCSW when assessing the child's safety.

Finally, the procedural guide was updated to notify CSWs that although CWS/CMS now allows a referral to be promoted to a case without a substantiated allegation, under no circumstances are CSWs to promote a referral to a case without a substantiated allegation, until DCFS receives further directions from the State. (SA)

0100-520.10 (REV) Evaluating a Prospective Caregiver

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052010v0110.doc>

This procedural guide was revised to reflect AB 938's amendment to WIC 309 that now requires the county to exercise due diligence to identify and locate relatives within 30 days of a child's removal from the home. The social worker is required to provide written and oral notification to all appropriate adult relatives located. The written notification is a new form now available on LA Kids, titled "Relative Notification Letter." Further, at the request of the ASFA Division, instructions were modified to clarify that whenever a new individual moves into the home a new home assessment is required. (SA)

0300-508.30 (REV) Placements with Relatives: Informing the Court of Recurring Efforts to Locate Relatives

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050830v0110.doc>

This procedural guide was revised to reflect AB 938's amendment to WIC 309 that now requires the county to exercise due diligence to identify and locate relatives within 30 days of a child's removal from the home. The social worker is required to provide written and oral notification to all appropriate adult relatives located. The written notification is a new form now available on LA Kids, titled "Relative Notification Letter." (SA)

0700-500.10 (REV) Youth Development: Education

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0700/070050010v0110.doc>

This procedural guide was revised to reflect AB 167's amendment to Education Code § 51225.3 which now provides that 11<sup>th</sup> and 12<sup>th</sup> graders that transfer schools are not required to complete additional course work (not required from their former school district) that the new district requires in order to graduate. It was further revised to reflect that 2009-2010 ONLY youth with an IEP who do not pass the CAHSEE, qualify for a diploma, not just a certificate of completion. Finally resource information was added regarding Early Care and Education Services. (SA)

0700-504.20 (REV) Referring Dependent Children for Special Education or Early Intervention Services (Early Start)

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0700/070050420v0110.doc>

This procedural guide was revised to provide updated information on Federal laws,

including the Federal Individual Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and Special Education Services under the IDEA. It also revised the instructions for CSWs to follow regarding children 0-36 months who are involved in a substantiated referral to reflect requirements for DCFS Medical Hub disability screenings and referrals to regional centers or the local education agency. It also revised the instructions for when a child 3-5 years may need behavioral or academic performance intervention. Further, specific CWS/CMS documentation instructions regarding IEPs and Case Plan were added. Finally, information was added on early intervention services, preschool services, special education services, student study teams, IEPs, and Individual Family Service Plans (IFSP).

0700-507.10 (REV) Appointment of Educational Representative or Educational Surrogate Parent for the Purpose of Making Educational Decisions

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0700/070050710v0110.doc>

This procedural guide was updated with summaries of the legal duties of all parties involved in the limitation of education rights and appointment of an Educational Representative or an Educational Surrogate Parent. Further, the procedural guide was updated with instructions showing that the CSW, not minor's counsel, is responsible for initiating the JV-535 form and further showing that the Court Clerk, not the DCFS Court Officer, is responsible for sending the completed and signed JV-535 and a JV-536 forms to the Local Educational Agency when appointment of an educational surrogate parent is requested by the court. Finally, references to pertinent Rules of Court and state statutes regarding this issue have been added and summarized. (SA)

1200-500.30 (REV) DCFS Countywide Alcohol & Drug Testing Program

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050030v0210.doc>

This procedural guide was updated to inform CSWs that when providing clients with a photograph on DCFS letter head to use in lieu of a photo identification when testing at Pacific Toxicology (for clients who do not have a photo identification), the CSW or SCSW must sign the document. (SA)