



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

DENIAL OF REUNIFICATION SERVICES

K.C. v. Superior Court. – filed March 18, 2010, Third Dist.

Docket No. C063449

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C063449.DOC>

Mother sought an extraordinary writ arguing the juvenile court abused its discretion in denying her reunification services and setting a 366.26 hearing. A newborn baby was removed from mother's custody in 2009 and the petition alleged that the child was at risk of neglect because mother had a history of addiction and failed to reunify with the child's half siblings. The petition also alleged that the child was at risk of sexual abuse because the father had a conviction for violation of Penal Code section 288, subdivision (a), involving a five-year old child and mother did not appear to recognize the danger he posed to the child. A half-sibling born in 2003 had complications due to withdrawal from caffeine and nicotine and mother's continued abuse of nicotine was a factor which led to her neglect of the half siblings and termination of her parental rights in 2005. In the half sibling's case, evidence of the mother's neglect of her children was based, in part, on her behavior which put her own needs, including smoking, ahead of their needs, i.e., she left the infant half sibling unattended to go outside and smoke, neglecting the infant's care, and ignored the infant's distress to attend to her own comfort first. After mother's rights were terminated for the half-sibling, she continued to abuse nicotine despite ongoing efforts by service providers and the newborn tested positive for nicotine at birth and had delays due to nicotine exposure. In addition, father's probation officer did not consider mother a suitable responsible adult to supervise father's contact with children because she had a history of neglecting her children and of being molested as a child yet chose the father as a partner. The juvenile court sustained the

petition, noting that the mother had a long history of nicotine abuse, was made aware of the dangers of smoking, and chose to do nothing about it. The juvenile court denied mother services pursuant to section 361.5, subdivision (b)(10) and (11).

Writ denied. The appellate court found that the problems that led to the removal of the child's half-siblings were severe neglect resulting from the mother's lack of concern about their welfare and was characterized by her extreme dependency upon nicotine, which she pursued to the exclusion of caring for the half-siblings' needs. In addition, the mother was provided services to address her neglect, inadequate parenting, and dependence upon nicotine, but was resistant to the services. The appellate court also found that despite having lost custody of her other children for neglect based in part on her nicotine dependence, mother continued to assert that she was not addicted and did not need the Alcohol and Other Drug Services. Her inability to recognize the risk the father posed to the child was also a continuance of the pattern seen in the prior case of lack of responsibility or concern for the child's needs over her own. Overall, the appellate court found mother's efforts to address the issues which caused her to neglect the half-siblings were, at best, lackadaisical and found the juvenile court did not abuse its discretion in denying her services. (JC)

TERMINATION OF REUNIFICATION SERVICES FOR AN INCARCERATED PARENT; WIC §361.5(a)(3), WIC §366.21(f), WIC §366.21(g)

In re A.H.- filed March 11, 2010, Fourth Dist., Div. Three

Docket No. G043003

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G043003.DOC>

Father, who had a history of drugs and gang affiliation, was incarcerated through much of the dependency proceeding. At the 12-month review, the social worker recommended termination of reunification services because the only services available to father in prison were AA/NA meetings and his expected release date was less than 30 days before the 18-month review hearing, the social worker was unsuccessful in making contact with him, and it took father a month to respond to the social worker when she wrote to him. Further, while father was cooperative during his incarceration and had consistent visitation, he did not comply with services when he was not incarcerated. During the course of the dependency proceeding father was released from jail, and before he was arrested again, he lived a transient drug lifestyle, associated with gang members, and was involved in illegal acts *despite* knowing his children were dependents of the juvenile court and his parental rights could be terminated. The social worker also believed that there was not a substantial probability of return by the 18-month date because it was unlikely that father would be able to obtain lawful employment, acquire safe adequate housing, or provide for four small children within 30 days of his release. The court determined that there was a substantial risk of detriment to return the children at the 12-month review, concluded that there was not a substantial probability that children would be returned to his care by the next period of review, and terminated reunification services. Father filed writ petition, claiming that the court should have applied WIC 361.5(a)(3) which takes into account a parent's incarceration rather than applying WIC 366.21(g).

Writ denied. The juvenile court correctly considered all relevant factors under WIC sections 361.5(a)(3), 366.21(f), and WIC 366.21(g) when terminating services. While WIC 366.21(f) requires the court to take into account barriers to an incarcerated parent's access to services or ability to visit when determining whether return would be detrimental, it is not the legislative intent to automatically toll the timelines or extend reunification services to the 18 or 24 month date for incarcerated parents and the statutes do not suggest that they be given a free pass on compliance with their case plan or visits. Such barriers are just one of many factors the court must take into consideration when deciding whether to continue services. Here, when determining that the children could not be returned pursuant to WIC 366.21(f), the court considered barriers father faced in complying with the case plan. The court then appropriately determined, pursuant to WIC sections 366.21(g) and 361.5(a)(3), that there was also not a substantial probability of return by the 18-month date. The appellate court agreed that neither section lowers this threshold finding in cases involving incarcerated parents, but just gives the court a "safety valve" by allowing it to provide parents with more time to reunify when they have been prevented from doing so because of their incarceration. The safety valve was not available to father. While he made a good faith effort to utilize the services available to him while incarcerated, he was unable to obtain services relevant to the problems leading to removal, and his conduct when he was briefly out of custody suggested that the likelihood of him remaining out of custody even if he was released prior to the 18-month review was small. (SA)

THERAPIST- PATIENT PRIVILEGE, WIC 317(f).

In re S.A. – filed March 15, 2010, Fourth Dist., Div. One
Docket No. D055148

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D055148.DOC>

S.A. was born in Trinidad. When she was 10 years old, her great aunt and uncle brought her to California with her parents' permission. They intended to adopt her together, but divorced when she was 13 years old, and her uncle adopted her as a single parent. S.A. was detained at age 15 because she disclosed sexual abuse by her uncle. The juvenile court sustained a petition under WIC 300(d). Uncle/adoptive father appealed.

Affirmed. Juvenile court did not err in excluding statements by S.A.'s former therapist that S.A. never disclosed sexual abuse to the therapist and the therapist did not believe S.A.'s allegations. S.A., through her counsel, invoked the therapist-patient privilege. The fact that the therapist had already made statements to police and social workers did not waive the privilege. Although privilege is not absolute in dependency proceedings, and does not preclude testimony about a child's participation and progress in therapy, and other information needed by the court to provide treatment and services to the child, in this case the evidence father sought to introduce was not for the purpose of providing treatment or services to S.A., but for the purpose of impeaching S.A. Substantial evidence supported the jurisdictional findings under WIC 300(d). (MM).

NON-DEPENDENCY CASES OF INTEREST

WITNESS STATEMENTS; WORK-PRODUCT PRIVILEGE

Coito v. Superior Court – filed March 4, 2010, Fifth Dist.

Docket No. F057690

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F057690.DOC>

In wrongful death case, state's attorney sent investigators to interview witnesses. State's attorney used the recorded statements of the witnesses in taking their depositions. Plaintiff sought discovery of the recorded statements. Trial court refused to allow discovery of the statements, ruling that they were protected as attorney work product. Plaintiff filed writ petition. Reversed. A written or otherwise recorded statement of a witness, taking by an attorney or an investigator working for an attorney, is evidentiary material that may be used at trial. It is not protected by the work-product doctrine and is subject to discovery. (MM)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

10-16 Timely Update To The Medi-Cal Eligibility Database System (MEDS)

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1016MEDS.rtf>

This FYI is to advise DCFS staff that it is critical that they submit form DCFS 280, "Technical Assistance Action Request," in a timely manner whenever there is a placement/replacement to assure the prompt entry of information into CWS/CMS. The updates in CWS/CMS interface with Medi-Cal Eligibility Database System (MEDS) to update MEDS inquiry options. MEDS is used to obtain online information regarding Medi-Cal eligibility and other information. The State and all health and mental health service providers rely on MEDS to determine and provide appropriate services in a timely manner. (SA)

10-18 Cancellation of the Kin-GAP Made Simple Flyer

Link to FYI: http://dcfs.co.la.ca.us/Policy/recent_updates/PolicyUpdate.htm

This FYI is to advise DCFS staff to discontinue the use and distribution of the Kin-GAP Made Simple Flyer; to remind staff that one of the basic provisions of Kin-GAP is that the relative caregiver may have received either Youakim or Cal Works benefits or no benefits at all prior to entering the Kin-GAP program; to inform staff to refer to Procedural Guide 0100-520.35, Kinship Guardianship Assistance Payment (KIN-GAP) Program for more comprehensive and detailed information and instructions regarding Kin-GAP; and to advise staff to refer to and provide the DCFS 5620, Comparison of Legal and Financial Benefits of Adoption, Legal Guardianship and Planned Permanent Living Arrangement, to caregivers and prospective permanent caregivers in the process of completing the Concurrent Planning Assessment. (SA)

10-19 Requesting a Child's Birth Certificate From The State

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1019BirthCertificateRequests.rtf>

This FYI is to inform DCFS staff that they should be sending the VS 111, Application for Certified Copy of Birth Record/Sworn Statement/Certificate of Acknowledgement to the State for requesting a birth certificate rather than submitting DCFS 230, Request for Verification/Certificate of Evidence when requesting a birth certificate. The DCFS 230 is for internal use only and is not to be sent to the State. (SA)

10-20 Obtaining Medical Records From Kaiser Permanente

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1020MedicalrecordsfromKaiser.rtf>

This FYI is to inform staff that DCFS and Kaiser Permanente (Kaiser) have jointly developed the new: "*DCFS/Kaiser Permanente Medical Records Request FAX*" (Kaiser FAX), a two-way FAX form designed to expedite the process of obtaining medical records for DCFS involved children/youth. The FYI further informs staff of what information must be included in the fax and where the fax should be send. (SA)

Procedural Guides:

0900-511.10 (REV) AFDC-FC/GRI-FC Rates

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090051110FCRatesv0310.doc>

This procedural guide was revised to reflect the appropriate in state and out of state group home rates. It was also updated to provide information and instructions on the impact of the court decision in *California Alliance of Child and Family Services v. Cliff Allenby et. al* issued on February 23, 2010 in which the District Court ordered the California Department of Social Services (CDSS) to adjust the group home rates paid under the California's Rate Classification Level (RCL) system to reflect the California Necessities Index (CNI) increases from 1990-91 through 2009-10. Thus, effective immediately and retroactive to December 14, 2009, counties shall pay the rates reflected in this procedural guide for both federally eligible and non-federally eligible children in group home placements. (SA)

E060-0570 (REV) Rate Change Request for Regional Center Arm (Alternative Residential Model) Rates and Dual Agency Rates

Link to procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E080/E080-0586TransferringMedi-CALServicesfromDCFStoDPSSforTransitioningYouth3-1-.doc>

This procedural guide was updated to notify staff that effective July 1, 2009, Specialized Care Increment (SCI) payments may be paid to the child if the child was receiving AFDC-FC SCI payments in the month prior to when the Kin-GAP benefits began. This includes Dual Agency rates. The procedural guide was also updated to reflect that Early Start program eligibility requirements have been amended to eliminated "at risk," as an eligibility criterion. (SA)

E080-0586 (REV) Transferring Medi-Cal Benefits From DCFS to DPSS for
Transitioning Youth

Link to procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E080/E080-0586TransferringMedi-CALServicesfromDCFStoDPSSforTransitioningYouth3-1-.doc>

This procedural guide was revised with instructions on transferring a Medi-Cal case from DCFS to the Department of Public Social Services (DPSS) for the purpose of determining whether the youth is eligible for continuation of Medi-Cal benefits under a different program. (SA)

E090-0590 (REV) Foster Care Placement/Replacement

Link to procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E090/E090-0590FosterCarePlacement-ReplacementUpdated3-3-10.doc>

This procedural guide, which discusses permanency for children by identifying and placing children in a placement that will facilitate family reunification and/or provide a permanent home, has been revised with recent changes to the foster care program. (SA)