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NEW DEPENDENCY CASE LAW

APPLICATION OF SECTION 366.26(c)(1)(A): EXCEPTION TO ADOPTION TO ESTABLISH A LEGAL GUARDIANSHIP WITH A RELATIVE

In re K.H., et al – pub. November 30, 2011; Fifth Dist.

Docket No. F062295

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F062295.DOC>

In August 2010, the juvenile court declared K.M and K.H. dependents under section 300, subdivisions (b), (j), and (g), due to mother's failure and inability to supervise the children as a result of her mental illness. At the dispositional hearing, the court denied mother reunification services under section 361.5, subdivision (b)(10) based on her failure to reunify with a prior dependent half-sibling A., and to make reasonable efforts to treat the problems that led to A.'s removal. The court ordered visitation for mother and set a section 366.26 hearing. Despite a determination by an adoption specialist that the children were adoptable, the recommendation of the department at the section 366.26 hearing was that the children remain in the care of their maternal grandparents under a permanent plan of legal guardianship. A contested section 366.26 hearing was set at the request of children's counsel. At the contested hearing the court found applicable the exception to termination of parental rights of section 366.26, subdivision (c)(1)(A), designating legal guardianship with the maternal grandparents as the permanent plan of K.M. and K.H. The counsel for the children contended that the juvenile court erred in applying this exception because it was required to find the relative caregiver's inability or unwillingness to adopt was due to "appropriate circumstances" and a desire merely to remain grandparents rather than become legal parents of their grandchildren was not within legislative intent.

Affirmed. Here, the juvenile court properly ordered legal guardianship as the children's permanent plan pursuant to section 366.26(c)(1)(A). In applying this exception the court found that (1) the grandparents were unwilling to adopt the children because of circumstances that did not include an unwillingness to accept legal or financial responsibility for the children, (2) the grandparents were willing and capable of providing the children with a stable and permanent environment through legal guardianship, and (3) removing the children from the grandparents' custody would be detrimental to their emotional well-being. Further, the language of the statute does not preclude consideration of the relative caregiver's preference for legal guardianship due to family dynamics. (LS)

**TERMINATION OF PARENTAL RIGHTS; DUE PROCESS; SECTION 361.2
PLACEMENT WITH PREVIOUSLY NONCUSTODIAL PARENT; DETRIMENT**

In re Z.K.—filed Oct. 25, 2011, ordered pub. Nov. 23, 2011, Third Dist.

Docket No. C067441

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C067441.DOC>

In 2004, Z.K. was born to mother and father. When Z.K. was four months old, father and paternal grandmother left with him, and although mother tried to locate Z.K. for the next five years, she was unable to locate him. In 2008, Z.K. was taken into protective custody after he was found wandering alone near a busy roadway. Father was arrested for possession of methamphetamine. Father told police that mother had abandoned Z.K., and that she was in a “mental institution.” In actuality, mother had no history of mental illness, and was living and going to school in Ohio. In December 2009, mother happened to learn of father’s arrest on the internet, and she called social services immediately and requested return of Z.K. to her custody. However, by this time a section 366.26 hearing had been scheduled. In the section 366.26 report, the county agency noted that mother wished to be reunited with her son, and would do anything to get him back. Nowhere in the report did the agency address whether placing the child with mother would be detrimental. The agency requested an ICPC on mother’s home, which came back negative because of mother’s inadequate income, the small size of her apartment (only one bedroom), an unsafe stairwell in her apartment building and the possibility mother was living with a boyfriend. Mother made efforts to address the concerns in the report, and stated she would request another ICPC once she moved into a bigger apartment. The agency requested various continuances of the section 366.26 hearing, in order to verify the outcome of the second ICPC, and to provide information to State Adoptions, which was requesting a “full psychological evaluation” and “mental health history” for mother. Eventually, the agency recommended terminating mother’s parental rights, on the grounds that she failed to cooperate with the second ICPC. At the contested section 366.26 hearing, mother’s attorney stated that mother was requesting placement as a non-offending parent, and asked for a continuance so mother could find transportation (from Ohio) to attend the hearing. The court denied the request for a continuance, on the grounds that mother had been no-cooperative, and thereafter terminated parental rights. Mother appealed, on the grounds that the juvenile court denied her due process when it terminated her parental rights without finding by clear and convincing evidence that placing Z.K. with mother would be detrimental. Mother further argued there was no evidence in the record to support an implied finding of detriment.

Reversed. In this case, mother was requesting custody as a previously non-custodial parent; in order to terminate mother's parental rights, the court was required to first make a specific finding of detriment, by clear and convincing evidence. No such finding was made, nor could a finding of detriment be implied under the facts of this case. The termination of reunification services to a whereabouts unknown parent provides no support for a detriment finding. Nor can a finding of detriment be implied from a "failed" ICPC under the circumstances of this case. An ICPC is not legally required; the agency is entitled to use the ICPC as a tool to assess detriment, but Ohio's denial of placement under the ICPC can not be used as a proxy for the constitutionally required finding of detriment. Because the agency had the burden to prove detriment by clear and convincing evidence, any lack of information has to be held against the agency, not against mother. Finally, although mother's counsel should have filed a section 388 petition to obtain custody, the failure to do so was not dispositive, since all of the parties had proceeded all along with the understanding that mother was requesting custody. (PB).

TIMEFRAMES TO FILE FOR AND HOLD A REHEARING

In re K.A. – filed November 8, 2011 & partially pub. December 7, 2011; Second Dist., Div. Four
Docket No. B227997
Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B227997.DOC>

The juvenile court referee made dispositional orders on August 20, 2010. DCFS filed an application for rehearing of the orders on August 26, 2010 and the application was granted by operation of law on September 20, 2010. The rehearing was held on October 29, 2010. Father appealed the orders made on rehearing, arguing that the orders were not valid because the disposition orders had been final for over a month. Father also argued that because the rehearing was not held within 10 court days after the rehearing was granted, it must be reversed.

Affirmed. Father is incorrect regarding his claim that the disposition orders had been final for a month when the rehearing orders had been made. California Rules of Court, rule 5.540 provides that an order of a referee becomes final 10 calendar days after service of a copy of the order and findings under rule 5.538, if an application for rehearing has *not* been made within that time. DCFS filed an application for rehearing within the 10-day period so the order of the referee had not become final. Further, although the rehearing did not take place within 10 days of the order granting it as required by California Rules of Court, rule 5.542(e), the disposition orders on rehearing are still valid because father failed to demonstrate that he was prejudiced by the delay. His counsel fully participated in the rehearing and father was able to testify. (SA)

WIC §281; CCP §527.8

In re M.B. – partial pub. Dec. 12, 2011; Fourth Dist.

Docket No. E053095

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E053095.DOC>

Over the course of the dependency proceedings, mother repeatedly threatened, yelled and cursed at the Department's employees, including social workers, receptionists and security officers. She would also tie up the Department's phone lines with harassing calls. After the six month hearing, a therapist told the social worker that mother had threatened to shoot him/her. The department applied for an injunction prohibiting the mother from contacting its employees except through counsel. The court issued the injunction, but also permitted mother to contact the assigned social worker in writing or in response to contact initiated by the social worker. Mother appealed, claiming (1) the Department did not have the authority to issue the injunction; and (2) there was insufficient non-hearsay evidence to support issuance.

Affirmed. (1) The injunction was not authorized under WIC 213.5 (dealing with orders enjoining conduct which directly involves the child) or 340.4 (which allows the court to issue orders restraining the parents from "threatening the social worker, or any member of the social worker's family, with physical harm."), but was authorized under CCP 527.8, which allows an employer to obtain an injunction prohibiting violence or threats of violence against its employees. Application of a statute outside the WIC (and not expressly made applicable in the WIC) is *not* necessarily barred from dependency proceedings and courts should determine whether a statute is consistent with the overall purpose of the dependency system. Even if the juvenile court lacked statutory authority to issue the injunction, it had the constitutional authority inherent in all courts which enable them to carry out their duties and ensure the orderly administration of justice.

(2) Under WIC 281 and *In Re Malinda S.*, the court is authorized to receive and consider the report of the social worker, including any hearsay evidence contained therein, in any dependency proceeding. The fact that the hearsay was submitted in the form of a declaration is immaterial; the declaration is a "report" within the meaning of WIC 281 since it was in writing, filed with the court, and recounted the results of her investigation of the relevant facts and circumstances. There was sufficient evidence to support the injunction. (CA)

WIC §§317, 326.5

In re Nicole H. – pub. Nov. 30, 2011; Third Dist.

Docket No. C065981

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C065981.DOC>

Nicole H. was removed from her father due to emotional abuse. At the detention, an attorney was appointed to represent Nicole as both her attorney of record and CAPTA GAL (WIC §326.5). On March 12, 2010, Nicole reported that she had been raped by another minor in the foster home in which she had first been detained. Nicole was immediately removed to another home, and the matter was investigated and substantiated by law enforcement. On

March 17 and March 23, Nicole's attorney requested that the juvenile court appoint a guardian ad litem who would then hire a tort lawyer on a contingency or pro-bono basis to investigate the possible tort claim, asserting that (1) it is generally inappropriate for minor's counsel to investigate related tort actions; and (2) that his firm held the public defender contract for the county, which might present a conflict in the event of litigation against the county. At the March 25 jurisdictional hearing, the court did not address the request for the guardian ad litem. At disposition in April, counsel again requested appointment of the GAL. The court indicated it would look into the matter and "take some action" On July 26, the court appointed a CASA worker for Nicole, but the order did not appoint the CASA worker to serve as a separate GAL on behalf of Nicole or direct her to do anything with respect to the her potential tort claim. On August 25, 2010, Nicole's attorney again requested appointment of a GAL. The court denied the request, and minor appealed.

Reversed. In cases where minor's counsel discovers interests of the minor outside dependency which may result in separate adversarial proceedings, the court is required to appoint a separate guardian ad litem. Without a separate guardian ad litem, the minor would be left without an individual to make decisions on his or her behalf related to potential civil proceedings. Under WIC §317(e) and CRC 5.660(g)(3), if the court finds further action is required on behalf of the child to protect or pursue interests in other judicial forums, the court must appoint an attorney for the child (if the child is not already represented by counsel) and do one or more of the following: (A) refer the matter to the appropriate agency for further investigation and require a report to the court within a reasonable time; (B) authorize or direct the child's attorney to initiate and pursue appropriate action; (C) appoint a separate guardian ad litem for the child. Guardian ad litem in dependency and in adversarial proceedings serve different purposes and interests of the minor. In adversarial proceedings, the GAL controls litigation, compromises or settles actions, controls procedural steps incident to the conduct of litigation, makes tactical and fundamental decisions affecting litigation and makes stipulations or concessions in the incompetent person's interests. In dependency, the CAPTA GAL advocates for the protection and safety of the child, investigates, participates in presenting evidence to the court, advises the court of the child's wishes and investigates interests of the child beyond dependency. The court can appoint a CASA as guardian ad litem so long as the court also orders the CASA to act on behalf of the minor in connection with the potential tort action before the initiation of civil proceedings (under WIC §104, the court determines the extent of the CASA's duties in each case. Absent specific direction, a CASA is not required to do anything more than notify the court of potential tort claims and await specific direction of the court.) (CA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

Procedural Guide:

0050-503.85 (REV) Sensitive Referral Cases

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050385Sensitivereferralsv1211.doc>

This procedural guide was updated to better reflect child welfare best practices for DCFS. Specifically, clarification was provided on which referrals/cases are considered sensitive. (SA)

0070-534.10 Assessment of Emotional Abuse

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007053410EmotionalAbusev1211.doc>

This procedural guide provides social workers with various definitions of emotional abuse, including the definition of Penal Code section 11165.3; provides them with an overview of how to assess a particular emotional abuse; and provides instructions on observing, gathering, assessing evidence, etc. regarding emotional abuse. The instructions in this procedural guide are primarily meant to assist the emergency response investigation. (SA)

0070-547.11 (REV) Time Frames For Responses To Referrals

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054711v1211.rtf>

This procedural guide was revised to reflect that the time frame for the second attempted contact on a 5-day referral has been changed from 3 calendar days to 3 business days. (SA)

0070-547.14 Expedited Joint Response Referral Protocol with Psychiatric Mobile Response Team (PMRT) and DCFS

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054714ExpeditedJointv1211.doc>

This procedural guide is to notify staff of the new protocol between the Los Angeles Departments of Children and Family Services (DCFS) and Mental Health (DMH) which has been developed to establish a formal process for the timely notification of, identification of, and response to DCFS youth experiencing acute and/or urgent mental health needs to ensure better individualized safety plans for children. This protocol ensures communication between Field Response Operations (FRO) and DCFS when the FRO team responds in person to a child, but does not hospitalize the child. All efforts will be tracked and evaluated for efficacy and improved outcomes for children. (SA)

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

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007056110v1211.doc>

This procedural guide was revised to inform staff that the “No Longer Interested” (NLI) notification to DOJ can be submitted via the Criminal Clearance Tracking System (CCTS). The electronic submission of NLI information will allow DOJ the ability to update information in a more expeditious manner. In addition, the telephone numbers and addresses referenced have been updated. The procedural guide was also updated to inform staff that effective 01/01/12, non minor dependents (NMDs) returning to foster care after a period of trial independence must be live scanned if the placement being considered for the NMD is a home with minor dependents. (SA)

0100-510.35 (REV) Special Placements

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051035v1211.rtf>

This procedural guide was updated to notify staff that when approving special placements, although a DCFS 4213 form is still required for placement in an adult facility, Out-of-Home Care Management Division clearance/approval is no longer required. (SA)

0100-520.37 Kinship Support Services

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052037v1211.doc>

This procedural guide informs staff of the California’s Kinship Support Services Programs (KSSP) which promote the provision of community-based family support services to relative caregivers and the dependent children placed in their homes by the juvenile court and to those who are at risk of dependency or delinquency. The KSSP also promotes the provision of post permanency services to relative caregivers who have become the legal guardian or adoptive parent of formerly dependent children. Los Angeles County receives limited dollars to be used as seed funding through the KSSP to collaborate with community agencies to establish public/private partnerships to assist in providing supportive services. The Kinship section is responsible for tracking and reporting data/outcomes as required by the agreement. (SA)

0100-570.08 (REV) The Care of Children Placed in a Licensed Foster Home, Relative/Non-Relative Extended Family Members Home or Small Family Home

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010057008v1211.doc>

This procedural guide was updated to clarify the purpose of a social worker’s contact with a child. (SA)

0200-506.10 (REV) Applicant Assessment for the Adoption of Children

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050610v1211.doc>

This procedural guide was updated to ensure that all prospective adoptive parents have their addresses cross checked with the Megan's Law website. It was also updated to instruct social workers to check the Megan's Law website to ensure that prospective adoptive parent(s) and any adults or children residing in the home are not registered sex offenders. (SA)

0200-519.10 (REV) Adoption of Children Under the Interstate Compact on the Placement of Children (ICPC)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020051910ICPCv1211.doc>

This procedural guide was revised as a result of changes to the Interstate Compact for the Placement of Children, regulation 2. (SA)

0300-318.05 (REV) Obtaining Restraining Orders

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030031805v1211.doc>

This procedural guide was revised due to changes in WIC 213.5 due to the passage of AB 1596 which now require cases to be related to domestic violence in order for Juvenile Court to issue restraining orders. The procedural guide was also updated to reflect that the range of actions the court can order restraining orders for have expanded to include stalking, threatening, harassing, telephoning, and any contact by mail. (SA)

0300-503.55 (REV) Protective Custody Warrants: Requesting or Recalling and Report of Runaway Event/Return of Youth Age 18 or Older

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050355WarrantV1211.doc>

This procedural guide was revised with the updated procedure for filing for a protective custody warrant. (SA)

0300-503.80 (REV) Vacation Requests

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050380V1211.doc>

This procedural guide was updated to remind staff that non U.S citizen children need a valid green card and a passport from their country of origin to travel outside the United States. Depending on where they are traveling to they may also need a visa. (SA)

0500-302.10 (REV) Suspected Child Abuse Report: Release of Information Pursuant to Penal Code Sections 11167(d) and 11167.5

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0500/050030210v1211.doc>

This procedural guide was revised to reflect the change of name and number of the form SS 8583, Child Abuse Investigation Report to BCIA, 8583, Child Abuse or Severe Neglect Indexing Form. In addition, revisions were made to reflect changes in Penal Code Section 11167.5 regarding to whom disclosure may be made of child abuse or neglect investigative reports resulting in a summary report being filed with the Department of Justice. (SA)

0600-507.10 (REV) Youth Development: Reproductive Health

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050710v1211.doc>

This procedural guide was updated to reflect changes to Family Code section 6926 which now allows a minor who is 12 years of age or older to consent to medical care related to the prevention of a sexually transmitted disease. (SA)

0600-515.09 Exodus Recovery Urgent Mental Health Care Center Referral

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060051509ExodusReferralv1211.doc>

This procedural guide is to notify staff of Exodus Recovery 23-hour Psychiatric Urgent Care Center (Exodus), which is a welcoming environment where individuals in crisis can be assessed for stabilization services, medication evaluation and management, or hospitalization if necessary. The Urgent Care Center is open 24 hours per day, 365 days per year, on a walk-in basis for the entire Los Angeles community. The Exodus Urgent Care Center offers comprehensive care by an interdisciplinary team of MD's, Nurse Practitioners, R.N.'s, and Therapists. Social services, referrals to community programs and resources, after care planning, and transportation to the youngster's next destination are all included in the standard of care delivered at the Exodus Urgent Care Center. (SA)

0900-511.20 (REV) Adoption Fees

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090051120AdptFeev1211.doc>

This procedural guide was merged with 0900-511.21, "Adoption Fee Determination Guide." (SA)

1000-505.60 (REV) Case Transfer to and from the Adoption and Permanency Resources Division

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1000/100050460V1211.doc>

This procedural guide was updated to notify staff that Concurrent Planning Redesign (CPR) has rolled out county-wide. (SA)

1200-500.85 (REV) Special Immigrant Status (SIS)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050085SISv1211.doc>

This procedural guide was updated to notify staff that the Special Immigrant Juvenile Status eligibility requirement has changed. An undocumented child is now eligible for Special Immigrant Juvenile Status when the Juvenile Court has made the finding that family reunification with **one or both** parents of the undocumented child is not viable due to abuse, neglect, and/or abandonment. This new requirement has replaced the previous requirement of a child being under the permanent plan of Planned Permanent Living Arrangement (AKA long-term foster care). In addition, a description of the Special Immigrant Status (SIS) Unit was added to clarify when the SIS Unit is assigned as primary and secondary to cases. (SA)

1200-500.86 (REV) Immigration Options For Undocumented Children and Families

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050086Immigrationv1211.doc>

This procedural guide was updated with the eligibility requirements for Special Immigrant Juvenile Status, the link to countries eligible for Temporary Protected Status, and referenced telephone numbers. (SA)

1200-502.00 (REV) Returning Runaway Youth Who are From Other Jurisdictions: (Inside and Outside of California)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050200ICJv1211.doc>

This procedural guide was revised to reflect the renumbering of Welfare and Institutions Code sections related to the implementation of the Interstate Compact on Juveniles (from WIC 1300 to 1400). (SA)