



“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

TERMINATION OF REUNIFICATION SERVICES

In re Alanna A. -- ordered published Jan. 9, 2006, Fourth Dist., Div. One

Docket No. D046690

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D046690.DOC>

At the 12-month review hearing, if a Welf. & Inst. Code § 366.26 hearing is not set, the juvenile court has discretion under § 366.21(g)(1) to terminate reunification services to one parent, while continuing services to the other parent until the 18-month review date. Because father did not take advantage of previously offered services, and did not visit the child consistently, it was not an abuse of discretion to terminate his reunification services, while allowing mother another six months of services. (MM)

**TERMINATION OF PARENTAL RIGHTS; PARENTAL RELATIONSHIP EXCEPTION;
DENIAL OF WIC § 388 PETITION**

In re Aaliyah R. – filed Feb. 3, 2006, Second Dist., Div. Eight

Docket No. B183517

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B183517.DOC>

Prior to the Welf. & Inst. Code § 366.26 hearing, mother -- a teen parent who was also a dependent -- filed a § 388 petition requesting return or additional reunification services, arguing that she had matured and made changes in her life and was now ready to care for her child. Under § 388, a parent must show both changed circumstances and that modification would promote the child's best interests. In making this determination, the juvenile court should consider: the seriousness of the reason for the dependency and the reason the problem was not overcome; the relative strength of the parent-child and child-caretaker bonds and the length of time the child has been in the system; and the nature of the change in circumstances, the ease by which it could be achieved, and the reason it was not made sooner. The juvenile court did not abuse its discretion by denying the § 388 petition. “That mother may have had a last-minute change of heart during the last brief months of a long saga of poor choices, inappropriate behavior and refusals to care for her daughter is not compelling evidence of a

‘legitimate,’ ‘genuine’ or ‘lasting’ change of circumstances.” Furthermore, the child had lived in foster care far longer than she had lived with mother and was bonded to her foster mother. Nor did the juvenile court abuse its discretion by rejecting the mother’s § 366.26(c)(1)(A) defense and finding that a mere “affectionate closeness” between the mother and the child during irregular visits was outweighed by the child’s bond with her caregiver and need for permanency and stability. (MM)

NON-DEPENDENCY CASES OF INTEREST

FAMILY LAW – MOVE-AWAY ISSUES

In re Marriage of Brown & Yana – filed Feb. 2, 2006, Cal. Supreme Court
Docket No. S131030

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S131030.DOC>

Under Fam. Code § 7501, the parent with primary custody has the presumptive right to change the residence of a child, but the noncustodial parent may seek a custody modification upon a showing that the move will cause detriment to the child. The noncustodial parent must make a threshold showing of detriment to be entitled to an evidentiary hearing. (At the hearing, the trial court determines whether a change in custody is in the child’s best interests, in light of: the child’s interest in stability; the distance of the move; the child’s age; the child’s relationship with both parents; the relationship between the parents; the child’s wishes if mature enough; and the extent to which the parents currently share custody.) In this case, the trial court did not err in denying the noncustodial parent a hearing; his offer of proof included only abstract evidence about the poor public schools and high crime rate in the new location, and did not show that the move would cause any specific or concrete harm to the child or to his relationship with the child. (MM)

TERMINATION OF PARENTAL RIGHTS UNDER FAM. CODE § 7825

In re Baby Girl M. – filed Jan. 27, 2006, Fourth Dist., Div. One
Docket No. D046838

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D046838.DOC>

The mother placed her baby for adoption. After the prospective adoptive parents filed their petition to adopt in superior court, the father came forward and sought custody. The prospective adoptive parents successfully petitioned to terminate the father’s parental rights under Fam. Code § 7825, on grounds that his three prior felony convictions rendered him an unfit parent. The court of appeal reversed, holding that termination of parental rights is not authorized by Fam. Code § 7825 absent evidence that the facts underlying the felony conviction or convictions prove that the parent is unfit. Here, the father’s felony convictions for burglary and drug possession showed no indications of violence, lewd behavior, use of the family home, harm to family members, involvement or victimization of minors, or other direct indicators of parental unfitness. (CS)

TERMINATION OF PROBATE GUARDIANSHIP

Guardianship of L.V. – filed Feb. 7, 2006, Third Dist.
Docket No. C046252

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C046252.DOC>

Under Prob. Code § 1601, the best interest of the child is the sole criterion for termination of a probate guardianship. The appellate court rejected the parents’ assertion that they had a constitutional right to have their child returned to them because they were now fit to care for her. The constitutional right to

parent one's child without court interference applies to a fit parent who has *custody* of his or her child. By the time of the hearing, the child, age 15, had lived with the guardians for almost four years, was thriving in their care, and was adamantly opposed to living with her parents. The court's finding that it would be detrimental to the child to return her to her parents was supported by substantial evidence. (CS)

UNPUBLISHED CASES OF INTEREST

The following are unpublished and may not be cited as legal authority (Cal. Rules of Court 977(a)):

Denial of Petition for Modification

In re Rachel O. – filed Feb. 8, 2006, Second Dist., Div. One

Docket No. B183736

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B183736.DOC>

Juvenile court abused its discretion in denying mother's Welf. & Inst. Code § 388 petition. Mother presented substantial and unrefuted evidence of changed circumstances (she had complied with the case plan, maintained a clean apartment, and finally received effective treatment for depression), and the parents had maintained strong bonds with their children. The court of appeal directed that the case be remanded to a different judge because the referee made inappropriate and biased remarks to the mother, and abused judicial authority by compelling the parents to stay in their apartment and prove they could keep it clean instead of moving to a house they had inherited. The court of appeal also directed that DCFS assign a different social worker, because the social worker on the case failed to conduct a proper investigation for the § 388/366.26 hearing and made inaccurate and biased comments at the hearing. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0070-548.05 Emergency Response Referrals Alleging Abuse in Out-Of-Home Care Regarding Children Who are Under DCFS Supervision

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007054805.doc>

This procedural guide has been revised to clarify instructions and language relating to emergency response referrals alleging abuse in out-of-home placements. (DE)

0070-548.13 Probate Code Section 1513(C) Referrals

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007054813FC1513referrals.doc>

This new procedure provides that when a guardianship investigation for the probate court uncovers allegations a parent is unfit under WIC § 300 that the case be referred to DCFS for further investigation. (DE)

0080-502.15 Non-Related Legal Guardianship From Probate Court: Case Plans

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/008050215ProbateGuardianship.doc>

The guide has received a revision to clarify the process by which guardianship cases from the probate court involving non-related caretakers may be referred for foster care payments. (DE)

0080-503.00 Notification to the Child Support Services Department (CSSD)

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0080/0080503.00ChildSupportServicesDepartment.doc>

This is a new procedural guide for determining whether referring a parent to Child Support Services will pose a barrier to reunification, interfere with the parent's ability to comply with a family reunification plan, or otherwise interfere with the parent's ability to care for a child. (DE)

0100-520.35 Kinship Guardianship Assistance Payment (KIN-GAP) Program

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052035.doc>

This procedural guide has been revised to include information regarding alternate or co-guardianships, and the Independent Living Program. (DE)

0900-506.10 Clothing Allowances

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0900/0900506CLOTHINGallowance.doc>

This guide has been revised to remove language stating that group homes do not receive clothing allowances. (DE)

0900-513.10 Funeral, Burial & Cremation Costs

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0900/090051310Funeral.doc>

A new procedural guide has been released regarding how DCFS must assist non-related caretakers with funeral, burial and cremation costs following the death of a child when there is no parent available to plan or pay for the funeral. DCFS can provide up to \$5,000 for expenses, but group homes are precluded from receiving money under this program. Where appropriate, related foster care providers receiving Kin-GAP payments can receive assistance through that program. (DE)

E080-0530 Relative (Youakim) Foster Care

Link to procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E030/E0300530YKPolicy.doc>

Outline of procedure for eligibility workers to follow in determining whether a relative caretaker can receive funding under Youakim. (DE)

E080-0580 Medi-Cal Benefits

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E080/E0800580MedicalBenifits.doc>

This procedure has been revised to state that a child will **not** lose Medi-Cal coverage after running away from a placement. (DE)

For Your Information (FYIs):

06-01 Documentation of Contacts in Court Reports

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0601DocumentingCcontactscourtreports.doc>

Reminder to CSWs to report all contacts made in the preparation of court reports. The reported information should include the date, method of contact, and the contact's relationship to the case. (DE)

06-02 Appropriate Educational and Foster Placements for Children with Exceptional Needs

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0602Educationneeds.doc>

This FYI provides information about changes to the state Education Code regarding appropriate educational and foster placements for children with exceptional needs. (DE)

06-05 Administration of Emergency Medical Assistance and Injections for Severe Diabetic Hypoglycemia and Anaphylactic Shock and Subcutaneous Injections of Other Prescribed Medication to a Foster Child

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0605InjectionsbyCaregivers.doc>

This FYI explains Health & Safety Code § 1507.25 that has been enacted to allow designated foster caretakers to give emergency injections and injections of prescribed medications under limited circumstances after receiving appropriate training. It also notes that a child's need for injections under § 1507.25 cannot provide the sole basis for determining that a child needs specialized in-home health care. (DE)

06-06 Completing Applicant Assessment for Attached Applicant Residing Outside Los Angeles County

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0606ApplicantAssessment.doc>

This FYI provides and outline for completing adoption assessments for applicants residing outside of Los Angeles County. (DE)

06-07 REV Wraparound Services

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0607WraparoundservicesRevised.doc>

This FYI requires each DCFS office to develop a wraparound referral process for children facing placement in RCL 12 care. Children in RCL 12 care for more than 6 months and children leaving an RCL 12 placement shall also receive wraparound referrals. Implementation of this FYI is to begin on March 1, 2006. (DE)

06-12 Use of the Structured Decision Making (SDM) Safety Plan

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0612SDMSafetyPlan.doc>

This FYI clarifies the use of the Structured Decision Making Safety Plan. Specifically, CSWs are not allowed to threaten a child's removal from a parent due to the parent's non-compliance with the safety plan. The safety plan is not meant to take the place of a Voluntary Family Maintenance agreement but is instead intended to address short-term safety concerns and document the efforts made to keep a child at home. (DE)

06-13 Telephone Access Rights of Children and Youth in Foster Care

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0613TelephoneAccessforChildreninFosterCare.doc>

This FYI explains the rights of foster children to make and receive confidential telephone calls without blanket prohibitions. In particular, calls to family members ordered by the court, social workers, attorneys, CASAs, probation officers, community care licensing, and the state foster care ombudsman may not be limited or prohibited. Limitations on calls to any other person or entity must be reasonable. (DE)