



“DEPENDENCY LEGAL NEWS”

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Written by: David Estep (DE), Cameryn Schmidt (CS), Jenny Cheung (JC), Leslie Starr Heimov (LSH)

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NEW DEPENDENCY CASE LAW

APPEALS

In re Josiah Z. - filed July 25, 2005, Cal. Supreme Court

Docket No. S125822

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S125822.DOC>

The children's trial counsel appealed from the denial of placement with relatives. Newly appointed appellate counsel sought funds to visit the children and assess their situation, as she believed the appeal may not be in the children's best interests and was considering requesting dismissal. The court of appeal ruled that appellate counsel lacked the authority to move to dismiss the appeal based on her assessment of the children's best interests. In addition, the appellate court believed that *In re Zeth S.* (2003) 31 Cal.4th 396 prevented it from ruling on such a motion. The supreme court held that appellate counsel for a dependent child may seek dismissal of a child's appeal based on the child's best interests, and the appellate court has the discretion to grant or deny such a motion, even if it involves consideration of postjudgment evidence. Appellate counsel may also request funds to meet in person with a child client in order to investigate a potential motion to dismiss; however, appellate counsel may actually file a motion to dismiss only after receiving authorization from the child (if capable of giving informed consent) or the child's CAPTA guardian ad litem. The court concluded that a dependent child must have a CAPTA guardian ad litem on appeal as well as in the juvenile court. A child's trial counsel who has also been appointed as the CAPTA guardian ad litem continues as the guardian ad litem on appeal, though an appellate court could appoint appellate counsel as the child's CAPTA guardian ad litem on appeal assuming that counsel met CAPTA's competence requirements and there was not a conflict of interest in serving in both roles. Regarding requesting funds to visit a child client, appellate counsel has the burden of justifying the request, which will generally only be appropriate where the guardian ad litem is uncertain about the propriety of dismissal (and thus possibly could be convinced by appellate counsel to sanction a motion to dismiss). In this case, appellate counsel did not demonstrate good cause for her request for funds to visit her young clients where the children's guardian ad litem adamantly opposed dismissal. (CS)

ICWA

Mary Doe v. Arthur Mann - filed July 19, 2005, Ninth Circuit

Docket No. 04-15477

Link to case:

[http://www.ca9.uscourts.gov/coa/newopinions.nsf/A32D0DBFC890578788257042008169C7/\\$file/0415477.pdf?openelement](http://www.ca9.uscourts.gov/coa/newopinions.nsf/A32D0DBFC890578788257042008169C7/$file/0415477.pdf?openelement)

A mother challenged the State of California's jurisdiction to terminate parental rights over her Indian child who was living on an Indian reservation at detention, arguing that 25 U.S.C. § 1911(a) gives Indian tribes exclusive jurisdiction over an Indian child's dependency proceedings. As a threshold matter, the Ninth Circuit Court of Appeals concluded that a federal district court had jurisdiction under 28 U.S.C. § 1331 to review a state court judgment terminating parental rights. The federal appeals court noted that ICWA gives tribes exclusive child custody jurisdiction over an Indian child living on a reservation "except where such jurisdiction is otherwise vested in the State by *existing Federal law*." (25 U.S.C. § 1911(a), emphasis in original.) The court found that Public Law 280 vested California with jurisdiction to terminate parental rights and order adoption for the child. California has jurisdiction over Indian child dependency proceedings until a tribe reassumes exclusive jurisdiction under 25 U.S.C. § 1918. (JC)

INCARCERATED PARENT

In re Iris R. - ordered published July 25, 2005, Second Dist., Div. Two

Docket No. B178738

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B178738.DOC>

Holding the jurisdictional hearing in the absence of an incarcerated mother who had asked through her counsel to be present did not violate her statutory right to attend the hearing under Pen. Code § 2625(d) nor result in a prejudicial denial of due process. Pen. Code § 2625(d) does not provide a right to be present at the jurisdictional hearing where the petition is adjudicated solely pursuant to subdivision (g) of Welf. & Inst. Code § 300 (language of the statute covers § 300 (a), (b), (c), (d), (e), (f), (i), and (j) only). The juvenile court in this case had in fact issued a removal order for the mother, but the Riverside County Jail did not honor the order. Regarding her due process claim, the mother failed to show that holding the hearing in her absence, even if it had violated her right to due process, was prejudicial and thus warranted reversal. The mother argued that had she been present for the hearing, she could have shown that she had made a proper plan for her children's custody (and thus defeated jurisdiction under § 300(g).) However, it appeared that the mother had already given the authorities all of the information she had about possible placements and none of the placements had panned out. Since the mother had received the relevant DCFS reports and was in contact with her attorney, any helpful information regarding the children's placement no doubt would have been provided to the court by DCFS or mother's counsel. As an aside, the appellate court urged the Legislature to address the frequent problem of jail authorities in other counties refusing to obey juvenile court removal orders, which undermines parents' rights and fosters disrespect for the judiciary and court orders. (CS)

JURISDICTION

In re Claudia S. - filed July 21, 2005, Fourth Dist., Div. One

Docket No. D045602

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D045602.DOC>

Without legally adequate notice, parents, one of whom had received oral notice that a dependency petition would shortly be filed regarding their children and who took the children out of the country

prior to its filing, were not barred by the disentitlement doctrine from appealing actions of the juvenile court. While a juvenile court will have jurisdiction over a child whose home state is California, personal jurisdiction over a parent requires proper notice. When a child will not be detained, Welf. & Inst. Code § 290.2(c)(2) requires a parent receive written notice 10 days before the initial hearing (here mother received oral notice 7 days before the hearing and prior to the filing of the petition). For a parent whose whereabouts are unknown, the agency is required to use due diligence and make a reasonable search to locate the parent (the record is silent as to the efforts to locate the father for the initial hearing). These failures left the court without jurisdiction over the parents despite due diligence in attempting to provide notice for subsequent hearings. Once the petition in this matter was actually filed, the court did have the authority to conduct the detention hearing, but should have conducted no further hearings and instead issued arrest warrants for the parents and protective custody warrants for the children. In conducting the post-detention hearings in the absence of the parents and children and without appointing counsel for the parties, the trial court left itself in a difficult situation when the parents and children did return and the court wanted to legally provide services. Waiting to conduct the jurisdictional hearing would have avoided these problems and allowed the court to properly assess current facts. Given the notice failures, the appellate court reversed all orders made after the detention hearing and remanded for further proceedings. (DE)

NON-DEPENDENCY CASES OF INTEREST

INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (ICARA)/ HAGUE CONVENTION

Gaudin v. Remis - filed July 18, 2005, Ninth Circuit

Docket No. 03-15687

Link to case:

[http://www.ca9.uscourts.gov/coa/newopinions.nsf/D6A105AC85A737B288257042004BDD81/\\$file/0315687.pdf?openelement](http://www.ca9.uscourts.gov/coa/newopinions.nsf/D6A105AC85A737B288257042004BDD81/$file/0315687.pdf?openelement)

Finding under ICARA that children, who were abducted by their father in Canada and brought to the United States, would face a grave risk of psychological harm if returned to their mother in Canada did not support order denying their return where the district court did not consider alternative remedies by which the children could be returned to Canada without risking psychological harm. The Hague Convention and ICARA required that custody be determined by the home jurisdiction, Canada, unless the existence of a grave risk of harm made that impossible. (CS)

CALIFORNIA LAW JOURNAL ARTICLES OF INTEREST

Judicial Council of California, Volume 5 of *The Journal of The Center for Families, Children & The Courts* (2004), 5 J. Center for Fam. Child. & Cts. __ [2004] [includes articles on the role of the juvenile court in educational outcomes for foster children, managing parental substance abuse, and mediation in dependency cases]

Link to journal:

<http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/journal/vol5.htm>

OTHER LEGAL DEVELOPMENTS

Noteworthy New or Revised Los Angeles County Department of Children and Family Services Policies --

For Your Information (FYIs):

05-35 Providing Services to Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Families (7/26/05)

This FYI reminds staff of DCFS's commitment and legal obligation to ensure that every child, birth family, resource/foster parent, and adoptive parent is served regardless of sexual orientation or gender identity and that specialized, uniquely tailored services are provided when needed. The release also provides links to several excellent websites. (LSH)

Link to policy: <http://dcfs.co.la.ca.us/Policy/FYI/FYI0535GLBTQIssues.doc>