



“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

HEARSAY

In re April C. – filed July 27, 2005, Second Dist., Div. Two

Docket No. B178548

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B178548.DOC>

Mother’s boyfriend appealed an order declaring his biological child a dependent of the court and denying him reunification services arguing that the juvenile court’s admittance of a sibling’s hearsay statements accusing him of sexually molesting her violated his due process right to confrontation under *Crawford v. Washington* (2004) 541 U.S. 36. The sibling was found incompetent to testify and the court admitted her hearsay statements pursuant to the child dependency exception as articulated in *In re Cindy L.* (1997) 17 Cal.4th 15, *In re Lucero L.* (2000) 22 Cal.4th 1227, and Welf. & Inst. Code § 355. The appellate court concluded that *Crawford* did not apply to juvenile dependency proceedings and that the Sixth Amendment right of a criminal defendant to confront an accuser did not extend to parents in dependency proceedings. (JC)

NOTICE

In re Wilford J. – filed July 28, 2005, Second Dist., Div. Seven

Docket No. B178480

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B178480A.DOC>

Notice to a father, unrepresented by counsel, regarding an upcoming pretrial resolution conference did not allow a juvenile court to proceed immediately to a jurisdictional hearing and default the father when he did not attend the pretrial conference. The father received notice a petition had been filed and the date of the hearing, but the notice did not identify the formal name of the hearing or explain its nature as required by Welf. & Inst. Code § 291(d)(2). Further, a parent’s failure to attend a properly noticed pretrial resolution conference (which did not occur in this case) does not constitute a waiver of the right to contest jurisdictional issues. Rather, if the court intended to go forward with the jurisdictional hearing on the same date as the pretrial resolution conference it would need to set the hearings on the same date and ensure proper notice for both hearings. “Absent the proper setting and notice of the jurisdictional hearing, or an express waiver of a party’s right to *section 291* notice (§ 291,

subd. (f)), it is error for the court to adjudicate the petition at the conclusion of the PRC.” While the notice was defective and the juvenile court erred in proceeding with the jurisdictional hearing in the father’s absence, the appellate court ultimately affirmed the actions of the juvenile court because the father waived the defects in the notice and the jurisdictional hearing when he failed to raise the issues at any subsequent hearing. (DE)

RELATIVE PLACEMENT

In re S.W. – ordered published August 1, 2005, Fourth Dist., Div. One
Docket No. D045342

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D045342.DOC>

When a child is placed away from a parent at disposition, a relative can request preferential consideration in the child’s placement. (Welf. & Inst. Code § 361.3) A criminal records check and a Child Abuse Index check must be completed, however, prior to the child’s placement in the relative’s home. If the records check reveals a conviction that would prevent licensure under Health & Saf. Code § 1522, the child cannot be placed in the home unless the relative receives an exemption from the county, “based on substantial and convincing evidence to support a reasonable belief” that the relative is of a character sufficient to warrant the child’s placement in the home. (Welf. & Inst. Code § 361.4.) Where a grandmother had a felony conviction for allowing her home to be used for selling narcotics, the social services agency had the executive authority to grant or deny the exemption and left the juvenile court with no authority to place the child in the grandmother’s home when the grandmother had not received an exemption for her criminal conviction. (*Los Angeles County Dept. of Children & Fam. Services v. Superior Court* (2001) 87 Cal.App.4th 1161, 1170, fn 10.) (DE)

NON-DEPENDENCY CASES OF INTEREST

MEDICAL MALPRACTICE

Arredondo v. Regents of the University of California – filed July 27, 2005, Second Dist., Div. One
Docket No. B176881

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B176881.DOC>

In a negligence action against a health care provider, a child is limited by Code Civ. Proc. § 340.5 to bring a suit within "three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, *whichever occurs first.*" Because this statute has been interpreted to give children the same benefits that adults receive, they are equally burdened by the statute’s restrictions. For children, as well as adults, therefore, if the injured party fails to ‘discover’ the negligent cause of an injury within three years after first experiencing harm from the injury, the party is barred from bringing a malpractice action. (DE)

SPECIAL EDUCATION

Benjamin G. v. Special Ed. Hearing Office – filed August 1, 2005, Second Dist., Div. One
Docket No. B179322

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B179322.DOC>

Under Ed. Code § 56329(b), when a school district observes a child in making an assessment of the child's educational needs, "an equivalent opportunity" will be provided for an independent educational assessment of the child's needs in the child's current educational setting and in any setting proposed by the public education agency. Where a school district observed a child in the classroom to determine his level of need, his parents were likewise entitled to have an expert of their choosing observe their child in the classroom setting proposed by the school district. Further, because the parents can have their expert testify at the administrative hearing regarding the placement, it is necessary that the expert's observation be allowed to occur prior to the due process hearing. (DE)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0300-306.05 Notice of Hearing For Juvenile Court Proceedings

Link to procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030605.doc>

This procedural guide has been modified to assist in ensuring that parents and children receive proper notice for all dependency court hearings. (DE)

For Your Information (FYIs):

05-42 IN RE: Wilford J. – Notice of Hearing on Petition

Link to policy: <http://dcfs.co.la.ca.us/Policy/FYI/FYI0542NoticeofHearingPetition.doc>

This FYI immediately implements changes in the handling of notices for jurisdictional hearings and pretrial resolution conferences based on the appellate court ruling in *In re Wilford J.* and adds new language to explain the nature of the hearings as required by the decision. (DE)