



“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

DUE PROCESS – RIGHT TO CONFRONTATION

Denny H. v. Superior Court – ordered published August 17, 2005, First Dist., Div. Four

Docket No. A109716

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A109716.DOC>

Parents' due process right to confront and cross-examine witnesses is violated by a local rule allowing county counsel to read an 'offer of proof' into the record instead of having the witness, in this case the social worker, testify on direct. However, this error is not structural, but is subject to harmless error analysis. (MM)

JURISDICTION

In re Savannah M. – ordered published August 16, 2005, Fourth Dist., Div. One

Docket No. D045713

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D045713.DOC>

While past conduct may be probative of current conditions, the question under Welf. & Inst. Code § 300 is whether circumstances *at the time of the jurisdictional hearing* show that the child is at risk of *future* harm. The case involved 19-month old twins, who were left with a family friend while their parents went to the store; both the parents and the friend had been drinking and the friend's earlier behavior toward the children had been mildly suspicious. The parents returned to find the friend molesting one of the twins, and immediately threw him out and called the police. During the two months between this incident and the jurisdictional hearing, the parents were fully cooperative with services. The court reversed the jurisdictional findings because the evidence did not support an inference that the children were at risk of future serious physical harm under § 300 (b) or (j). (MM)

TERMINATION OF JURISDICTION

In re Joshua S. – filed August 15, 2005, Second Dist., Div. Four

Docket No. B170343

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B170343A.DOC>

The juvenile court has the discretion to maintain jurisdiction over a child in a relative legal guardianship if exceptional circumstances exist. (Welf. & Inst. Code § 366.3(a).) The court abused its discretion by terminating jurisdiction over dependent children placed in a relative legal guardianship in Canada where the court was unaware it had the authority to order foster care funding if the children's plan were changed to long-term foster care. The children satisfied all of the criteria for AFDC-FC funding, including placement in the approved home of a relative. The fact that the children were placed with a relative outside of the U.S. was not disqualifying; Welf. & Inst. Code § 11105(d)'s authorization for AFDC-FC funding for out of state foster care placements is not limited to domestic placements. Had the court understood this, it likely would have found that it was in the best interests of the children to select long-term foster care as the permanent plan. At a minimum, the court should have asked the children's counsel if he planned to file a § 388 petition to enable the children to qualify for funding. Moreover, the children were not required to exhaust their administrative remedies before seeking a court order for funding, since doing so would have been futile in this case. (CS)

In re Tamika C. – filed August 9, 2005, Fifth Dist.

Docket No. F047571

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F047571.DOC>

The juvenile court abused its discretion by terminating jurisdiction over an 18-year-old dependent, who had yet to complete high school and opposed termination, solely because maintaining jurisdiction would be a financial burden on the Department. Instead of requiring the Department to prove that termination was in the child's best interests, the court erroneously shifted the burden of proof on to the child to show extenuating circumstances requiring continued jurisdiction. The Department also failed to provide the child with educational assistance as required by Welf. & Inst. Code § 391(b). The Department's actions with regard to Tamika, a slow learner who was diligently working toward finishing high school, were "more in the nature of sabotage rather than assistance." The court distinguished this case from *In re Robert L.* (1998) 68 Cal.App.4th 789 and *In re Holly H.* (2002) 104 Cal.App.4th 1324, in which the dependents who unsuccessfully opposed termination had finished high school and were either seeking special assistance to attend college or had refused to take advantage of services offered. The court also noted that while it might be common practice to terminate jurisdiction once a dependent turns 18 and federal foster care funding stops, it is not necessarily correct practice nor in the dependent's best interests.

Note: The social worker in this case submitted the JV-365 "Termination of Dependency Jurisdiction--Child Attaining Age of Majority" form. Cal. Rules of Court, rule 1466(d) requires the social worker to submit the form, which must be signed by the child, 10 days before the termination hearing. (CS)

TERMINATION OF REUNIFICATION SERVICES

Denny H. v. Superior Court – ordered published August 17, 2005, First Dist., Div. Four

Docket No. A109716

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A109716.DOC>

When, due to continuances, the 12-month review hearing is held more than 18 months after the child is removed from the parents, the hearing becomes an 18-month permanency planning hearing governed by Welf. & Inst. Code § 366.22, not § 366.21. Under § 366.22(a), if the child is not returned to the parents at the 18-month hearing, the court *must* terminate reunification services and set a § 366.26 hearing. A finding of reasonable efforts is not a precondition for terminating services and setting a § 366.26 hearing. The court only has discretion to grant a continuance of the 18-month hearing under § 352(d) if there are "extraordinary circumstances," and it is in the minor's best interest. (MM)

Sara M. v. Superior Court -- filed August 8, 2005, Cal. Supreme Court

Docket No. S129821

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S129821.DOC>

Welf. & Inst. Code § 366.21(e) and Cal. Rules of Court, rule 1460(f)(1) allow the court to terminate reunification services and set a § 366.26 hearing at the six-month review if the court finds by clear and convincing evidence that the parent has failed to contact and visit the child, regardless of whether jurisdiction was asserted under § 300 (g) (abandonment). However, reunification services must be continued if there are extenuating circumstances excusing the parent's failure to contact and visit the child. The mother in this case had one visit during the first six months of reunification, which was terminated because she acted inappropriately. She was denied subsequent visits because it appeared she continued to use drugs. Refusal to allow the mother to visit her children if under the influence of drugs or alcohol was reasonable and did not constitute extenuating circumstances. (CS)

NON-DEPENDENCY CASES OF INTEREST

MEDICAL MALPRACTICE

David M. v. Beverly Hospital – filed August 12, 2005, Second Dist., Div. Two

Docket No. B176692

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B176692.DOC>

A complaint alleging that a physician negligently failed to report suspected child abuse, which should have been discovered during a medical exam, constitutes a claim of professional negligence and is governed by the limitations period in Code Civ. Proc. § 340.5. Under § 340.5, a minor must bring such an action within three years from the date of the injury or by the minor's eighth birthday. (CS)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0300-503.20 Writing the WIC 366.26 Hearing Report

Link to procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050320.doc>

This procedural guide has been amended to recognize that social workers must include a visitation plan when recommending legal guardianship or long-term foster care as a permanent plan. (DE)

For Your Information (FYIs):

05-23 Communication with the Medical Director

Link to policy: <http://dcfs.co.la.ca.us/Policy/FYI/FYI0523CommunicatingwithMedDirector.doc>

The FYI provides links to online medical information (not working at publication time) and an email address for "Ask the Doctor" to ask general health, mental health and substance abuse questions. (DE)

05-41 Voluntary Placement

Link to policy: <http://dcfs.co.la.ca.us/Policy/FYI/FYI0541VoluntaryPlacement.doc>

This pamphlet clarifies what information must be provided to a caregiver when making a voluntary placement. This FYI also states that a child of appropriate age, as well as the caregiver, should be informed that the voluntary placement might be terminated at any time upon the request of the parent or guardian. (DE)