



**“DEPENDENCY LEGAL NEWS”**

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**NEW DEPENDENCY CASE LAW**

**DENIAL OF REUNIFICATION SERVICES**

***Anthony J. v. Superior Court*** – filed August 31, 2005, Second Dist., Div. One

Docket No. B183285

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B183285.DOC>

Father challenged denial of reunification services under Welf. & Inst. Code § 361.5(b)(6) (severe sexual or physical abuse). He admitted that he had physically abused his child's half-siblings, but argued that § 361.5(b)(6) did not apply to him because he was not a “parent or guardian” of the half-siblings. The court of appeal rejected this argument, and construed § 361.5(b)(6) to apply whenever a parent who has inflicted severe physical harm on a sibling is the parent or guardian of the child whose reunification services are at issue in the current case. (MM)

**GUARDIANSHIP VISITATION ORDERS**

***In re M.R.*** – filed August 29, 2005, Fourth Dist., Div. Two (partial publication)

Docket No. E037337

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E037337.DOC>

In the portion of the opinion certified for publication, the court of appeal addressed the amount of discretion that a court may grant to a legal guardian in deciding a parent's visitation. In construing the recently amended language of Welf. & Inst. Code § 366.26(c)(4), the court reasoned that the Legislature's decision to add a new subparagraph, § 366.26(c)(4)(C), evidenced a “clear” legislative intent to require juvenile courts to make visitation orders both for cases ordered into long-term foster care placements and legal guardianships. Based on this change, the appellate court held that a juvenile court “was required to make a visitation order unless it found that visitation was not in the children's best interest,” and that the court could not grant this authority to a guardian. While a juvenile court is allowed to delegate time, place, and manner decisions, it is an abuse of discretion to allow the guardian to make decisions regarding the frequency and duration of parental visits. (DE)

**ICWA**

***In re Alexis H.*** – filed August 22, 2005, Second Dist., Div. Eight

Docket No. B177126

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B177126.DOC>

Father argued that the jurisdictional order must be reversed because DCFS did not comply with ICWA's notice provisions. The court held that although the ICWA notices sent were defective, it was at most harmless error where DCFS recommended that the children remain with their mother and that the father receive family reunification services. The Indian Child Welfare Act requires notice only when the Department seeks foster care placement or termination of parental rights for an Indian child. (25 U.S.C. § 1912(a).) The court also interpreted 2005 amendments to rule 1439(b) of the Cal. Rules of Court as conforming rule 1439 to ICWA (though a more plausible interpretation is that the rule amendments only apply to delinquency proceedings). However, Welf. & Inst. Code § 290.1 et seq. mandates notice to a child's tribe of *all* dependency proceedings. Ultimately, the court concluded that even if ICWA notice is required where neither foster care nor adoption is recommended, the defective notices in this case were harmless error. The court distinguished *In re Jennifer A.* (2002) 103 Cal.App.4th 692, which held that ICWA notice was required even though the juvenile court placed the child with her father, because in that case the Department had *recommended* foster care. (CS)

## **JURISDICTION**

*In re Alexis H.* – filed August 22, 2005, Second Dist., Div. Eight

Docket No. B177126

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B177126.DOC>

The court rejected an incarcerated father's argument that there was insufficient evidence that his conduct placed the children at risk to support jurisdiction, because the mother's endangering conduct alone was enough to establish jurisdiction. A child is a dependent if either parent's actions bring the child within one of the statutory definitions. In any event, the fact that the father was incarcerated and unable to care for his children justified jurisdiction under Welf. & Inst. Code § 300(b). (CS)

## **REVIEW OF PERMANENT PLAN HEARINGS**

*In re Dakota H.* -- filed August 26, 2005, Fourth Dist., Div. One

Docket No. D045824

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D045824.DOC>

While a Welf. & Inst. Code § 366.26 hearing is pending, § 366.3 does not require the juvenile court to hold a review of permanent plan hearing every six months. Rather, § 366.3(d) requires a review hearing every six months only after completion of the § 366.26 hearing. Until completion of this hearing, § 366.3(d)(1)-(4) provides for review hearings at the request of the parent or the child, 12 months after the § 366.26 hearing or an order placing the child in long-term foster care, or 12 months after the previous review hearing. (DE)

## **TERMINATION OF PARENTAL RIGHTS – ADOPTABILITY**

*In re Marina S.* – ordered published August 25, 2005, Second Dist., Div. Two

Docket No. B181003

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B181003.DOC>

The court rejected a mother's argument that substantial evidence did not support the juvenile court's adoptability finding because the maternal grandparents' adoptive home study had not yet been completed and if they were not approved to adopt, the child could become a legal orphan. The fact

that the maternal grandparents were interested in adopting the child was evidence that she was likely to be adopted either by them or by some other family. The young child had no physical, mental, emotional, or developmental problems whatsoever. The grandparents had no criminal records or records for child abuse. Furthermore, the court took judicial notice of the fact that the grandparents' home study had been completed and approved after the termination hearing. In any event, a completed adoptive home study is not required before a court may terminate parental rights. (CS)

### **TERMINATION OF PARENTAL RIGHTS – BENEFICIAL RELATIONSHIP EXCEPTION**

*In re Dakota H.* -- filed August 26, 2005, Fourth Dist., Div. One  
Docket No. D045824

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D045824.DOC>

In deciding whether the beneficial parent-child relationship exception to termination of parental rights applies, the parent must show more than frequent and loving contact, an emotional bond, or pleasant visits. The parent must show that he or she has a parental role in the child's life and that there is a significant, positive attachment that outweighs the security that the child would gain from being adopted. In this case, the mother had visited consistently, and had a close and loving parent-child relationship with her autistic son, but she did not have the ability to meet his special needs. On the other hand, the child's prospective adoptive placement was very well-equipped to care for him. Thus, substantial evidence supported that the benefit to the child of continuing the relationship did not outweigh the child's "exceptional needs for a stable home and highly competent caregiver." (MM)

### **TERMINATION OF PARENTAL RIGHTS – DUE PROCESS**

*In re Dakota H.* -- filed August 26, 2005, Fourth Dist., Div. One  
Docket No. D045824

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D045824.DOC>

Court rejected mother's argument that due process required a new finding of parental unfitness because fifteen months had elapsed between the time the court found that it would be detrimental to return the child at the twelve-month review hearing and the time it terminated parental rights. Once the state proves and the court finds that return home would be detrimental to the child, the burden shifts to the parent to prove changed circumstances under either Welf. & Inst. Code § 388 or § 366.3(e). Mere passage of time does not shift the burden of proof back to the state to prove unfitness. (MM)

## **NON-DEPENDENCY CASES OF INTEREST**

### **PARENTAGE**

*Elisa B. v. Superior Court* - filed Aug. 22, 2005, Cal. Supreme Court  
Docket No. S125912.

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S125912.DOC>

The "holding out" presumption of parentage, Fam. Code § 7611(d), applies to a birth mother's same-sex partner. The partner is a parent under § 7611(d) because she agreed to raise children with the birth mother, agreed to the birth mother's insemination by an anonymous donor, received the resulting twins into her home and held them out as her own children. (The case arose because, after the couple broke up, the partner refused to pay child support.) (MM)

*K.M. v. E.G.* – filed August 22, 2005, Cal. Supreme Court

Docket No. S125643

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S125643.DOC>

(Companion case to *Elisa B.*). Both the woman who bore the children, and her partner who provided the ova, are legal parents because they intended to raise the children together, even though the partner signed a boilerplate ‘ovum donor’ contract purporting to waive her parental rights. (MM)

***Kristene H. v. Lisa R.*** – filed August 22, 2005, Cal. Supreme Court

Docket No. S126945

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S126945.DOC>

(Companion case to *Elisa B.*). A birth mother who entered into a pre-birth stipulated judgment of paternity with her partner, and then co-parented the child for two years with the partner, was estopped from later attacking the validity of this judgment. (MM)

## **STEPPARENT ADOPTION**

***In re Amy A.*** – filed August 24, 2005, Fourth Dist., Div. One

Docket No. D046032

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D046032.DOC>

Father’s actions supported termination of his parental rights on the basis of abandonment under Fam. Code § 7822, allowing the child to be adopted by her stepfather. The court was not precluded from finding that the father had “left” the child as required under the statute despite that the mother had moved away with the child and that a court order gave custody to the mother. Also, the fact that the father had not paid child support nor communicated with the child in over one year gave rise to a presumption that he had the requisite intent to abandon her. (CS)

## **UNPUBLISHED CASES OF INTEREST**

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

### **Post-Termination Placement**

***In re M.G.*** – filed August 19, 2005, Second Dist., Div. Three

Docket No. B184239

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B184239.DOC>

Court terminated parental rights at Welf. & Inst. Code § 366.26 hearing, and continued do-not-remove order barring DCFS from removing child from a relative placement without notice and a hearing. The court of appeal denied DCFS’s writ petition challenging the court’s authority to issue the post-termination do-not-remove order. Although DCFS has exclusive authority over post-termination care and custody under § 366.26(j) and Fam. Code § 8704(a), the juvenile court may still review post-termination placement decisions for abuse of discretion. Relying on *Fresno County Dept. of Children & Family Services v. Superior Court (Lily G.)* (2004) 122 Cal.App.4th 626, the court found that the juvenile court may require DCFS to come forward and explain, before replacing a freed child, why the move would not be an abuse of its discretion. (MM)

## OTHER LEGAL DEVELOPMENTS

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

#### **Procedural Guides:**

- 0300-503.15 Writing the Status Review Hearing Report
- 0300-503.16 Writing the 366.3 Status Review Hearing Report

Links to procedures:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050315StatusReview.doc>

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050316WIC3663.doc>

These procedural guides have been amended to require that social workers attach and include discussion of quarterly reports from foster family agencies and group homes when preparing status review reports. (DE)

#### **For Your Information (FYIs):**

- 05-43 Attaching Quarterly Reports From Foster Family Agencies (FFAs) and Group Homes to Court Reports

Link to policy:

<http://dcfs.co.la.ca.us/Policy/FYI/FYI0543AttachingQuarterlyreportsfromFFAGHCourtReports.doc>

This FYI reminds social workers of the need to attach and discuss quarterly reports from foster family agencies and groups homes when completing status review reports for Welf. & Inst. Code §§ 366.21(e), 366.21(f), 366.22, 366.3 hearings. (DE)

- 05-44 Introduction of the New Kinship Support Division

Link to policy: <http://dcfs.co.la.ca.us/Policy/FYI/FYI0544KinshipSuppotDivision.doc>

This FYI describes the new Kinship Support Division that integrates a number of DCFS services aimed at providing support for relative and non-relative extended family members. (DE)