



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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Written by: David Estep (DE), Martha Matthews (MM), Cameryn Schmidt (CS), Jenny Cheung (JC)

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NEW DEPENDENCY CASE LAW

ICWA

In re X.V. – filed September 13, 2005, Fourth Dist., Div. One

Docket No. D045843

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D045843.DOC>

In a previous appeal, the appellate court reversed a termination of parental rights after all parties stipulated that notice requirements under the Indian Child Welfare Act had not been met. Thereafter, the juvenile court held a special hearing to review the ICWA notices sent. The parents did not appear at the hearing, but their attorneys were present and did not object to the adequacy of the ICWA notices. The juvenile court found that ICWA did not apply and reinstated the order terminating parental rights. The parents then filed a second appeal alleging that the ICWA notices were defective. The court held that on a *second* appeal, the normal rules of forfeiture apply and the parents had forfeited their right to raise ICWA notice by failing to object in the juvenile court. But, in a *first* appeal, ICWA notice issues may be raised for the first time on appeal under this court's holding in *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247. (CS)

RESTRAINING ORDER

In re Matthew F. – filed September 13, 2005, Fourth Dist., Div. Two

Docket No. E037221

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E037221.DOC>

Father appealed a three-year restraining order issued against him arguing the trial court abused its discretion under Welf. & Inst. Code § 340.5(a) when it issued the order protecting a social worker. He did not challenge the sufficiency of evidence, but argued that the trial court lacked jurisdiction at the time the order was issued because the social worker was no longer assigned to the case. The court of appeal disagreed and found that

the social worker's protection did not end when the worker was taken off the case and that the protections of § 340.5 could likewise extend to social workers not assigned to a case. (JC)

TERMINATION OF PARENTAL RIGHTS – SIBLING RELATIONSHIP EXCEPTION

In re Naomi P., – filed Sept. 13, 2005, Second Dist., Div. Four
Docket No. B179756

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B179756.DOC>

Court of appeal affirmed application of sibling relationship exception, as supported by substantial evidence. [Note: This is the first published decision finding Welf. & Inst. Code § 366.26(c)(1)(E) applicable.] Naomi P, age 3, had regularly visited with her three older siblings all of her life, though she had never lived with them. After her aunt became unable to care for her, DCFS placed her with a non-relative who sought to adopt Naomi. The trial court found that the four siblings had a close relationship and that continued contact with them was important for Naomi's emotional well-being, expressing doubt that the caregiver would continue to support the sibling relationship if adoption were granted. The court ordered guardianship and ongoing sibling visits, and DCFS appealed. Affirmed. In applying § 366.26(c)(1)(E), the court must weigh the benefit to the child of the sibling relationship against the benefit of permanence through adoption. The central issue is the best interest of the child being considered for adoption, not the interests of the siblings. However, a sibling's close bond with a child may supply indirect evidence of the child's best interests. In this case, testimony from the siblings and other relatives, together with the court's doubts about the caregiver's intentions, provided sufficient evidence to support application of the sibling relationship exception. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0900-527.10 Emergency Aid Requisition (EAR): Office-Issued Check
C300-201 Electronic Accounting & Purchasing System (eCAPS) Field Office
Warrant and Field Office Check Issuance Procedures

Links to procedures:

<http://dfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090052710EARS.doc>

Links to procedures: <http://dfs.co.la.ca.us/Policy/Hndbook%20Clerical/c300/C300-201%20eCAPS%20Field%20C300201WarrantCheckRequeseCAPS.doc>

These procedural guides have been revised to enable children in foster care to receive emergency financial aid for clothing and special transportation needs. (DE)

For Your Information (FYIs):

05-45 Placement and the Child's HIV Status

Link to policy: <http://dcfs.co.la.ca.us/Policy/FYI/FYI0545HIVChildplacement.doc>

This FYI informs social workers that HIV status does not automatically require a child's placement into a segregated medical placement and that the medical needs of each individual must be considered in determining the most appropriate and least restrictive placement for the child. (DE)

05-48 Search for Prior Child Protective Services on CWS/CMS for Prospective Relative and Non-Relative Extended Family Members

Link to policy:

<http://dcfs.co.la.ca.us/Policy/FYI/FYI0548CWSCMSSEARCHRelatives.doc>

This FYI reminds staff to search for prior child protection cases on all prospective relative and non-relative extended family member placements, but acknowledges that prior involvement with child protective services is not an adequate reason, by itself, to deny a placement. (DE)