



# Children's Law Center of Los Angeles

## "DEPENDENCY LEGAL NEWS"

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### NEW DEPENDENCY CASE LAW

#### **GUARDIAN AD LITEM**

*In re D.D.* – filed Nov. 2, 2006, Fifth Dist.

Docket No. F050003

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/F050003.DOC>

The child, D.D., was detained from his parents, both minors, for drug use. The 17-year-old father was also placed in protective custody due to caretaker absence. The father did not appear in D.D.'s dependency proceedings until the six-month review hearing, at which time the juvenile court appointed him both an attorney and a guardian ad litem because he was under 18 (the court had done the same for the minor mother at the detention hearing). A short time later, the court terminated the father's reunification services. The father appealed, alleging that the juvenile court erred by failing to appoint him a guardian ad litem or an attorney at the beginning of the proceedings. Reversed.

The court of appeal held that because the father was a minor and a presumed father, the juvenile court was required to appoint him a guardian ad litem before the jurisdictional hearing, relying on Code of Civ. Proc. §§ 372 & 373, which require appointment of a guardian ad litem for any minor who is a party to a civil action. This was true even though the father did not personally appear since he was a presumed father. Further, the court found that the failure to appoint either a guardian ad litem or an attorney for the father rendered the proceedings fundamentally unfair, necessitating reversal of the jurisdictional findings and all subsequent orders. On remand, the juvenile court was ordered to appoint a guardian ad litem for the father if he was still a minor. If the father had turned 18, the juvenile court was to consider whether the father's developmental disability warranted appointment of a guardian ad litem for him as an incompetent adult under CCP § 372(a). In either case, the father was also entitled to appointed counsel.

Practice Tip: The appellate court's holding that a guardian ad litem must be appointed for any presumed father (and thus, mother) who is a minor appears to conflict with the Cal. Supreme Court's recent opinion in *In re Josiah Z.* (2005) 36 Cal.4th 664, 678 [in dependency context, appointment of GALs for children is governed by CAPTA and Cal. Rules of Court 1448, not CCP § 372]. If the court

is considering appointing a separate GAL for a minor parent that you represent, please discuss with your unit's writ attorney or a supervisor. (CS)

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

### **FAMILY LAW – “MOVE-AWAY” ISSUES**

*Niko v. Foreman* – filed Oct. 30, 2006, Fourth Dist., Div. Three

Docket No. G034442

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G034442.DOC>

The court of appeal clarified the application of prior “move-away” case law to a joint-custody case in which the mother wished to move out of state. The trial court continued joint custody but modified the co-parenting plan so that the father would have the child during summers and holidays. Affirmed. In such cases, the *Burgess* analysis does not apply. Instead, Fam. Code § 3087 requires the trial court to conduct a *de novo* analysis of the child's best interest, and, if necessary, modify the parents' time-share arrangement. (MM).

### **FAMILY LAW – UCCJEA**

*In re Marriage of Paillier* – filed Oct. 31, 2006, Fourth Dist., Div. Two

Docket No: E038464

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E038464.DOC>

This case applies the UCCJEA to an international “move-away” case. Mother and father divorced in France, and a French court awarded custody of the child, Brian, to mother and visitation to father, and enjoined mother from taking Brian out of France. Mother moved to California in spite of this order, and father sought to enforce it. The family court issued a “temporary emergency” order that Brian must be returned to France. Reversed. This was not a proper exercise of temporary emergency jurisdiction under the UCCJEA, because the child was not abandoned or at risk of harm. Under the UCCJEA, the French court has exclusive and continuing jurisdiction, and the CA family courts may only make temporary orders under Fam. Code § 3444 to enforce the visitation provisions (if feasible), but cannot modify the custody provisions, nor make any other new orders. The court of appeal ordered that Brian be returned from France, unless the French court declines jurisdiction or issues a contrary order. (MM)

## **OTHER LEGAL DEVELOPMENTS**

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

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

06-56     The Filing of Petitions

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0656PetitionFilings.doc>

This FYI reminds CSWs that Intake and Detention Control (IDC) staff scrutinize the filing of petitions to ensure a legal and factual basis for each count filed and gives CSWs the protocol used to determine whether or not a proposed count should be filed. (JC)