



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

DENIAL OF REUNIFICATION SERVICES; WIC § 361.5(b)(6)

In re Amber K. – ordered published Jan. 4, 2007, Fourth Dist., Div. Two

Docket No. B189559

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E041287.DOC>

Mother filed a petition for extraordinary writ arguing that the juvenile court erred in denying her family reunification services under Welf. & Inst. Code § 361.5(b)(6) (severe sexual or physical abuse) and in finding that reunification was not in the children's best interest. Mother was receiving family maintenance services for J.P., D.A., S.M., and D.L. when father sexually molested S.M. during Christmas break when he was left unsupervised with the children in the home. Mother allowed father to stay overnight in the home for several days against the conditions of his parole when she knew father had sexually abused D.L. in the past. At the adjudication on the § 342 petition against the mother, D.L. testified that father had sexually abused him 18 times and he told mother about the abuse every time and S.M. testified that mother allowed father to continue visiting in the home even after she told mother father had molested her. The trial court sustained the petitions and denied mother reunification services under WIC § 361.5(b)(6) and (b)(10). Writ denied. The appellate court found that subdivision § 361.5(b)(6) applied to a parent who gave actual or implied consent to the sexual abuse of the child by another person, as well as to the parent who was the actual perpetrator of the sexual abuse. The appellate court found that mother knew of the risk of father's past offending behavior and exposed the children to the risk of sexual abuse by allowing father to stay overnight in the home. The appellate court further noted that there was no evidence that reunification was in the children's best interest because mother's actions were not reasonable or protective and mother gave father the opportunity to sexually abuse the children. (JC)

PROSPECTIVE ADOPTIVE PARENTS; WIC § 366.26(n)

Wayne F. v. Superior Court – filed Dec. 20, 2006, Fourth Dist., Div. One

Docket No. D048807

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D048807.DOC>

Petitioners are foster parents who had cared for a child since 2000, when he was 3 months old. Parental rights were terminated in 2002, and petitioners signed an adoptive placement agreement in 2004, but had not completed the adoption process. In 2006, the county agency sought to remove the child from petitioners, on the grounds that they had prior CPS referrals, lacked parenting skills, and were ambivalent about the adoption. Petitioners filed a written response to the removal notice, and sought to be designated as prospective adoptive parents (PAPs) under Welf. & Inst. Code § 366.26(n). The juvenile court ordered a hearing on the removal issue, but would not allow petitioners to present evidence or arguments at the hearing, relying on language in § 366.26 stating that PAPs are not parties to the dependency case and do not have “standing to object to any other action” of the county agency.

Reversed. The language of § 366.26(n), together with the legislative history, make it clear that the Legislature intended to give PAPs the right to participate fully in the removal hearing (but not in other proceedings in the case). To determine whether removal is in the child’s best interests, the juvenile court needs to hear the PAPs’ evidence and arguments as well as the county agency’s. (MM)

RELATIVE PLACEMENT; WIC § 387

In re H.G. – ordered published Dec. 22, 2006, Fourth Dist., Div. One
Docket No. D048471

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D048471.DOC>

The juvenile court removed five-year-old H.G. from her paternal grandparents under Welf. & Inst. Code § 387 and immediately thereafter terminated parental rights under § 366.26. The court found that the grandparents had allowed the father to have unauthorized contact with the child after the grandparents’ youngest son died suddenly. The child had previously been in several different placements and been diagnosed with post-traumatic stress disorder and reactive attachment disorder. However, her current foster parents wished to adopt her. The parents appealed both the removal from the grandparents and the termination order.

Reversed. While substantial evidence supported the juvenile court’s finding that the facts as alleged in the § 387 petition were true, the juvenile court erred by removing the child from her grandparents without considering whether the placement was no longer appropriate according to the relative placement criteria in § 361.3. There was no evidence that the juvenile court considered the child’s special needs, the child’s or parents’ wishes regarding placement, the stability of the placement, or the quality of daily care provided by the grandparents. This was especially important in light of the child’s diagnoses of post-traumatic stress disorder and reactive attachment disorder. Furthermore, even assuming the court found that the relative placement was not appropriate under § 361.3, the court still had to hold a disposition hearing to determine whether removal was required. (Cal. Rules of Court, rule 1431(e).) Courts have long recognized that the harm created by removing a child from his or her home may be more serious than the harm which the state seeks to prevent. Here, the potential harm to H.G. of removal from her grandparents, where she was doing well, was significant. In contrast, there was no evidence that H.G. had suffered any harm from having unauthorized (but not unsupervised) contact with her father. The court also found that the parents had standing to challenge the removal under § 387 on appeal. Because the court of appeal reversed the § 387 findings and orders, it necessarily also reversed the order terminating parental rights. (CS)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

100-535.40 (REV) Continuation of AFDC-FC Payments for Non-Court Dependent Youth Age 18 Or Over Residing in an Unrelated Home

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010053540V1206.doc>

This procedural guide informs CSWs of procedures that address the continuation of AFDC-FC for non-court dependent youth over 18 years of age living with unrelated caregivers. By meeting certain criteria, these youth would be able to remain in out of home care placement when necessary. (JC)

200-507.15 (REV) Assessment of Petitioner(s) Birth Parent(s) & Child for an Independent Adoption

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0200/020050715V1206.doc>

This revised procedural guide informs CSWs of procedures to follow when the Independent/Stepparent Adoptions Unit receives an inquiry regarding an independent adoption. (JC)

For Your Information (FYIs):

06-57 Recording “Time To Investigation” Information Into CWS/CMS

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0657RecordingTimeIncestigationCWSCMS.doc>

This FYI advises CSWs that the state has issued an All County Information Notice (ACIN) # I-86,06 setting forth requirements for the recording of “Time to Investigation Information into CWS/CMS” and advises of them procedures to follow upon receipt of a response with an immediate response time. (JC)