



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

Vol. 2, No. 2 July 25, 2006

Issued by the Children's Law Center of Los Angeles the second and fourth Tuesday of each month

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

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NEW DEPENDENCY CASE LAW

DRUG TESTING

Carmen M. v. Superior Court -- filed Jul. 18, 2006, Second Dist., Div. Seven
Docket No. B189792

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B189792.DOC>

Dependent minor successfully completed drug treatment program at group home, and then was transferred to the group home's emancipation cottage. Group home staff wanted Carmen M. to continue to submit to drug testing. DCFS obtained an order from juvenile court that Carmen M. must submit to drug testing on demand, if group home staff suspect that she is under the influence. Minor filed writ petition. Writ denied. The court of appeal held that: (1) Under the juvenile court's broad authority to make orders for the care and treatment of dependent minors under Welf. & Inst. Code §§ 202(a) and 362(a), the court has authority to order the minor to undergo drug testing, if necessary to ensure the minor's health, safety and well-being. (2) "Properly limited" drug testing does not violate a dependent minor's constitutional right to privacy. In this case, the juvenile court ordered the testing as "part of an ongoing recovery program," not drug testing for law enforcement purposes; there was "specific and documented justification for the order" (the minor admittedly had a drug problem, and had voluntarily participated in a drug treatment program that included testing in the past); and the order included the "express condition that testing occur only if there is a reasonable suspicion" that the minor was under the influence.

The court also commented that: "[W]e have no occasion in this case to consider the full range of procedural protections that may be required to uphold drug testing of dependent children as part of either court-ordered treatment for substance abuse or an after-care program intended to assist the child sustain sobriety. Nonetheless, in general any such order should provide for the least intrusive, reliable method of testing and shield test results and other sensitive personal information from unnecessary disclosure, consistent with the purpose for which testing had been ordered." In a footnote, the court noted that the U.S. Supreme Court, in upholding drug testing of student-athletes, emphasized that "test results are not turned over to any law enforcement authority and do not lead to ... discipline or ... any adverse academic consequences." (MM)

GUARDIAN AD LITEM

In re A.U. – filed Jul. 12, 2006, Fourth Dist., Div. One
Docket No. D047847

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D047847.DOC>

The mother had a long history of mental illness. She had lost custody of five other children. The juvenile court appointed counsel for mother at the detention hearing for her sixth child. Mother never appeared for any of the hearings. Before the jurisdiction hearing, mother's counsel asked the court to appoint a guardian ad litem (GAL) for mother. Counsel said she had spoken to the mother and did not believe mother could assist in preparing her case. The court granted the request for a GAL and eventually denied reunification services and terminated parental rights. Mother appealed. The appellate court found that the juvenile court had erred in appointing a GAL, but found the error harmless and affirmed.

Preliminarily, the court rejected the Agency's argument that the mother's challenge to the appointment of a GAL was untimely because she did not file a writ petition pursuant to Cal. Rules of Court, rule 38.1. As the court recently held in *In re Enrique G.* (2006) 140 Cal.App.4th 676, there is an inherent conflict of interest between a parent who did not consent to appointment of a GAL and the attorney who recommended the appointment; thus, failure to file a writ does not waive later appellate review. The court found that the juvenile court violated the mother's due process rights when it appointed a GAL without first providing her with notice and an opportunity to be heard, since there was no evidence that mother had consented to the appointment. While the hearing to appoint a GAL may be informal, the court or counsel must explain to the parent the purpose of the appointment, the parent's resulting loss of authority over the litigation, the GAL's role, and why counsel believes appointment of a GAL is necessary. In addition, the court must inquire whether the parent understands the nature of the proceedings and can assist the attorney in protecting his or her rights. The mere fact that a parent is mentally ill does not justify a finding that he or she is incompetent. Nevertheless, the court held that the error in appointing a GAL was harmless beyond a reasonable doubt, as nothing in the record suggested that the mother would have taken a different course of action than the GAL did, and neither mother's GAL nor her counsel compromised her fundamental rights. (CS)

ICWA – IMPROPER NOTICE

In re A.U. – filed Jul. 12, 2006, Fourth Dist., Div. One
Docket No. D047847

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D047847.DOC>

Termination of parental rights was reversed where the Agency sent ICWA notice to the BIA, but not to the individual tribes identified by the child's relatives. The Agency is required to obtain all possible information about a dependent child's Indian heritage and to identify prospective tribes whenever possible. This includes researching the identity of tribes within a specific location as well as the history of non-federally registered tribes in the area to determine whether they have been absorbed into a federally registered tribe. The Agency may contact the BIA if it needs help in locating or identifying the child's prospective tribe(s). However, notice to the prospective tribes is required under 25 U.S.C. § 1912(a), Welf. & Inst. Code § 294(c), and Cal. Rules of Court, rule 1439(f). The juvenile court also violated rule 1439(f)(6) when it did not wait 60 days after notice was sent to the BIA and no determinative response was received before finding that ICWA did not apply. (CS)

JURISDICTION - UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

In re Baby Boy M.-- filed Jul. 19, 2006, Second Dist., Div. Seven

Docket No. B184199

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B184199.DOC>

Three siblings were detained in case that involved death of one child and serious injuries to another. While case was pending, mother gave birth to another child, Baby Boy M. According to mother, she left the hospital two days after Baby Boy M.'s birth and gave him to his father, who told her he was going to raise the child in Georgia. DCFS filed a petition as to Baby Boy M. The juvenile court ordered Baby Boy M. detained and issued a protective custody warrant for him. At disposition, the juvenile court declared Baby Boy M. a dependent and denied FR. Mother appealed, arguing that the court lacked jurisdiction. Reversed.

First, the "disentitlement doctrine" did not justify dismissing mother's appeal. Even though the mother deliberately prevented DCFS from locating Baby Boy M., her obstructive conduct occurred before the filing of the dependency petition.

Second, the juvenile court did not have jurisdiction over Baby Boy M. under the UCCJEA. Fam. Code § 3424 allows the court to take temporary emergency jurisdiction over a child present in the state. However, in this case there was insufficient evidence that Baby Boy M. was in California at the time the proceeding began. The juvenile court also did not have jurisdiction under Fam. Code § 3421(a)(2), because there was no evidence available in California regarding the "child's care, protection, training, and personal relationships." Finally, the juvenile court did not have jurisdiction under Fam. Code § 3421(a)(4), because the court could not conclude that no other state would have jurisdiction over Baby Boy M. (since he might be in Georgia). Under these circumstances, the juvenile court should only have issued a protective custody warrant, not proceeded to the jurisdiction and disposition hearing. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0050-503.80 (REV.) Infants Prenatally Exposed To Drugs And/Or Alcohol

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0050/005050380V0706.doc>

This revised procedural guide informs CSWs of procedures to follow when the child protection hotline receives a report of an infant prenatally exposed to drugs and/or alcohol. (JC)

0300-503.25 Removing a Child From the Home of Prospective Adoptive Parent(s)

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050325ProspectiveAdoptiveParent.doc>

This procedural guide informs CSWs of situations when it may be appropriate to remove a child from the home of a prospective adoptive parent. (JC)

1000-501.30 (REV.) Dependency Investigation (DI) Assignment: From Court to Regional DI

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/1000/100050130DIAssignment.doc>

This revised procedural guide informs CSWs of procedures to follow when a case is to be assigned to a Regional DI. (JC)

For Your Information (FYIs):

06-37 California High School Exit Examination (CAHSEE) Update to FYI 04-10, What CSWs Need to Include in Court Reports Regarding a Child's Education

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0637CAHSEE.doc>

This FYI informs CSWs of questions the court will ask at each regular hearing for all children and of frequently asked questions about the CAHSEE. (JC)