



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

ADOPTABILITY; WIC § 366.26(c)(1)

In re Helen W. – filed Apr. 25, 2007, Fourth Dist., Division Three

Docket No. G037374

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G037374.DOC>

Newborn and 3 year old child were detained due to neglect and parental drug abuse. Both children had serious special needs. At Welf. & Inst. Code § 366.26 hearing, mother argued that there was insufficient evidence of adoptability, because the agency's report relied solely on the foster parent's willingness to adopt. The court terminated parental rights and mother appealed. Affirmed. The record did include evidence of adoptability aside from the foster parent's willingness to adopt. Moreover, "[w]hen a child is deemed adoptable only because a particular caretaker is willing to adopt, the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent's adoption and whether he or she is able to meet the needs of the child." There was sufficient evidence under this standard to support the finding of adoptability. The court of appeal also affirmed the juvenile court's finding that the § 366.26(c)(1)(A) exception did not apply. (MM)

DISQUALIFICATION

In re Charlisse C. – filed Apr. 23, 2007, Second Dist., Div. Five

Docket No. B194568

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B194568.DOC>

Mother sought to disqualify the Children's Law Center ("CLC") from representing her child based on the fact that one of CLC's three units had previously represented the mother. The mother alleged that the ethical screens that had separated CLC 1, 2, and 3 as approved in *Castro v. Los Angeles County Bd. of Supervisors* (1991) 232 Cal.App.3d 1432 had been breached. The juvenile court agreed, although it found no evidence that any of the breaches involved information specific to the parties in this case, and granted the disqualification. Reversed.

In the lead opinion, Justice Mosk ruled the juvenile court's finding that none of CLC's alleged breaches had resulted in any disclosure of case-specific confidential or privileged information was determinative. "California courts do not disqualify lawyers on conflict-of-interest grounds—particularly lawyers from legal-services agencies—when the lawyer has no actual or imputed conflict of interest." In addition, the juvenile court applied the wrong legal standard. *Castro* dealt with concurrent conflicts. However, in a successive-conflict case such as this involving CLC, the correct standard is: "If the individual lawyer had a direct and personal relationship with the former client, then the lawyer and the lawyer's unit should be disqualified automatically, as a matter of law; when the individual lawyer had no direct and personal relationship with the former client, as in this case, but the party moving for disqualification presents evidence that the Center's ethical screens have been breached, the juvenile court should treat the Center as a single law firm for conflicts purposes only if the moving party's evidence establishes a reasonable possibility that the lawyer has actually obtained, or will inadvertently acquire, material confidential information relating to the former client's representation." The court identified various factors ("*Rhaburn* factors") the juvenile court should consider, none of which supported disqualification in this case. Several years had passed since the mother was represented by a different unit of CLC, there was no evidence that the mother's case was unusual or notorious, CLC had institutional mechanisms in place to prevent disclosure of confidential information, and any breaches were in the past, temporary, and sporadic and did not support a reasonable probability that the child's attorney in the present case had or would have access to the mother's confidential information. Justice Armstrong concurred in a separate opinion and Presiding Justice Turner dissented. (CS)

GUARDIAN AD LITEM -- PARENTS

In re Jaclyn S. – filed Apr. 25, 2007, First Dist., Div. One
Docket No. A114754

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A114754.DOC>

Child was detained at birth because mother had substance abuse and mental health problems. Juvenile court appointed guardian *ad litem* for mother at her attorney's request, after a discussion with mother. Mother did not appear at the dispositional hearing. At that time, her visitation had been suspended due to missed visits and intoxication during visits. Attorney and GAL agreed to submit on the agency's reports. The court denied reunification services and set a Welf. & Inst. Code § 366.26 hearing. Mother, the attorney and the GAL were all present for the § 366.26 hearing. The GAL told the attorney that mother had requested a new attorney, a new GAL, and a new judge. The GAL instructed the attorney to submit on the agency's reports, and to convey mother's requests to the court, and the attorney did so. The court denied the mother's requests and terminated parental rights. Mother appealed.

Affirmed. The juvenile court conducted an informal hearing as to the need for a GAL, and found that the mother would benefit from having a GAL, but this hearing was arguably inadequate because the court did not clearly explain to mother the consequences of having a GAL. Any error was harmless, however; having a GAL did not deprive mother of notice or the opportunity to participate in the case. Mother cannot claim prejudice on the basis that her attorney and GAL failed to make meritless arguments. This case is different from prior cases in which appointment of a GAL may have prevented the parent from presenting evidence or otherwise participating in the case. [In an unpublished part of the opinion, the court of appeal also rejected mother's claim that she should have had a *Marsden* hearing on harmless error grounds; her challenge to the court's finding that the child was adoptable; and her ICWA notice claim.] (MM)

TERMINATION OF PARENTAL RIGHTS; WRITS; REMITTITUR

In re Brandy R. – ordered published May 4, 2007, Fourth Dist., Div. Three
Docket No. G037792

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G037792.DOC>

Mother appealed the termination of her parental rights alleging that the juvenile court lacked jurisdiction to hold the termination hearing before the remittitur from the mother's prior writ proceeding had been issued. Affirmed. The court of appeal held the juvenile court had the authority to go forward with the Welf. & Inst. Code § 366.26 termination hearing pending issuance of the remittitur on the writ. A writ proceeding is different from an appeal. Rule 8.452(g) of the Cal. Rules of Court gives the appellate court discretion to stay a § 366.26 hearing pending determination of a writ only on an exceptional showing of good cause. Clearly then, the juvenile court proceedings were not automatically stayed by the mother's filing of a writ petition. (CS)

UNPUBLISHED CASES OF INTEREST

The following are unpublished and may not be cited as legal authority (Cal. Rules of Court 8.1115(a)):

Caretaker Relative Exception; WIC § 366.26 (c)(1)(D) and § 366.26 (k)

In re L.B. – filed Apr. 25, 2007, Second Dist., Div. Seven
Docket No: B192733

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B192733.DOC>

Mother and child L.B. appealed termination of parental rights and denial of a continuance for a decision as to whether L.B. can participate in mother's prison program. Rita, the relative caretaker for L.B. preferred to seek legal guardianship but acquiesced to adoption because the social worker and juvenile court told her that if she didn't adopt L.B., he would be taken away from her and placed with someone outside the family for adoption. The court of appeal reversed the order terminating parental rights and ordered the juvenile court to assign the case to a different judicial officer to consider the applicability of the "caretaker relative exception." The juvenile court committed prejudicial error when it used, and allowed the social worker to use threats and misinformation to coerce the caretaker into agreeing to adopt the child instead of hearing and considering her reasons for preferring legal guardianship. Where a caretaker is "unwilling" to adopt but willing and capable of providing a child with a stable and permanent home and where it is undisputed that the child's removal from the caretaker's home would have been detrimental to the child's emotional well-being, the "caretaker relative exception" to the termination of parental rights should be considered. In addition, exceptional circumstances need not be extraordinary circumstances but can be "uncommon or out of the ordinary." (JC)

Probate-Appointed Legal Guardian Entitled to Reunification Services

In re Jasmine R. – filed Apr. 24, 2007, Second Dist., Div. Four
Docket No. B194544

Link to case: <http://www.courtinfo.ca.gov/opinions/nonpub/B194544.DOC>

Two siblings, aged 4 and 2, were cared for by maternal grandmother since birth. Grandmother was appointed as their guardian by probate court in March 2006. In August 2006, the children were detained. The court declined to order family reunification services, and ordered the agency to seek an adoptive placement. Grandmother appealed. Reversed. Legal guardians appointed by the probate

court (unlike legal guardians appointed by the dependency court) are entitled to reunification services unless one of the Welf. & Inst. Code § 361.5 exceptions applies, or unless the probate guardianship is terminated under § 728 before disposition. (MM)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

For Your Information (FYIs):

07-11 JV-290, Caregiver Information Form

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0711JV290InfoCaregiver.doc>

This FYI advises staff that effective immediately CSWs shall begin utilizing the JV-290, Caregiver Information Form. This Form allows a caregiver to document information related to the child's current medical, dental, general physical and emotional health, as well as the child's current education status, the child's adjustment to their living arrangement, and other relevant information. The CSW shall include the JV 290, the JV 290 Cover Letter, and the JV-280 notice form for the WIC 366.21, 366.22 and the 366.3 Status Review Hearings, in the caregiver's primary language when available, along with information on how to file the form with the court. (JC)

Procedural Guides:

100-520.35 (REV) Kinship Guardianship Assistance Payment (KIN-GAP)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010052035V0407v2.doc>

This revised procedural guide contains additional language concerning age requirements for Kin-Gap, as well as a reminder that prior to termination of jurisdiction, CSWs need to make sure that the home assessment is current. (JC)

200-519.10 (REV) Adoption Of Children Under the Interstate Compact on the Placement of Children (ICPC)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0200/020051910ICPCv0407v2.doc>

This revised procedural guide informs CSWs that ICPC home studies must be completed within 60 days. Instructions were also revised and/or added regarding entering information for ICPC cases into CSW/CMS and for receiving the Out-of-County Services Unit case once the ICPC adoptive home study is approved and sent to the ICPC Adoption Coordinator. (JC)

300-306.05 Notice of Hearings for Juvenile Court Proceedings

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030605NoticeV0507.doc>

This revised procedural guide informs CSWs that they shall include the JV-290 (Judicial Council Caregiver Information Form), the JV-290 Cover Letter, and the JV-280 notice form for the WIC

366.21, 366.22, and the 366.3 Status Review Hearings, in the caregiver's primary language when available, along with information on how to file the form with the court. (JC)

1200-500.05 The Indian Child Welfare Act (ICWA)

Link to procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/1200/120050005ICWAv0507.doc>

This procedural guide informs CSWs of when ICWA and state Indian child laws apply, rights of federally recognized tribes, and active efforts a CSW must provide an Indian family, which is casework that goes beyond reasonable efforts. (JC)