



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA; “EXISTING INDIAN FAMILY” DOCTRINE; WIC 360.6

In re Vincent M. – filed May 17, 2007, Sixth Dist.

Docket No. H030258

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/H030258.DOC>

Vincent, age two, was detained due to mother's heroin use and father's incarceration. Mother had failed to reunify with seven other children. Mother notified the county child welfare agency of her Indian heritage and gave the agency her tribal enrollment number. Mother and Vincent had previously lived on a reservation, and Vincent had been given an Indian name and taught the tribe's language. However, the only tribe that responded to the ICWA notices stated that Vincent was not eligible for membership. At the dispositional hearing, the juvenile court found that the ICWA did not apply, denied family reunification services, and placed Vincent in foster care. Parents successfully appealed, because the agency had sent out defective ICWA notices. On remand, the agency sent out new notices but no tribe responded within the time limit. Shortly before the Welf. & Inst. Code § 366.26 hearing, a tribe certified that Vincent was a member, and sought to intervene or transfer jurisdiction to the tribal court. A maternal cousin who was a tribe member and lived on the reservation requested placement of Vincent. The juvenile court denied the tribe's and the cousin's motions, found that the ICWA did not apply because Vincent was not part of an “existing Indian family,” terminated parental rights, and selected a plan of adoption by Vincent's non-Indian foster parents.

Reversed. After a detailed analysis of the ICWA, WIC 360.6, the *Holyfield* case, and the split in California case law, the court of appeal concluded that the “existing Indian family” doctrine is contrary to the plain language of both the ICWA and WIC 360.6. The court of appeal rejected the argument that the child’s constitutional right to a stable placement requires that the ICWA be interpreted to apply only to “existing Indian families.” The court pointed out that the trauma that would be caused if Vincent were separated from his foster parents would be the agency’s fault – not the fault of the tribe or the ICWA itself – since the agency had been on notice since the beginning of the case that Vincent was likely an Indian child. In a concurring opinion, J. Bamattre-Manoukian stated that *Crystal R.* (which he authored) is no longer good law in light of WIC 360.6. (MM)

ICWA – NOTICE ISSUES.

In re Amber F. – filed May 16, 2007, Fourth Dist., Div. Three
Docket No. G037570

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G037570.DOC>

Seven-year-old child was detained due to drug use by mother, released to mother at 18-month hearing, and then redetained. At the jurisdictional hearing on the new dependency petition, the child welfare agency noted that the child had possible Indian heritage, and submitted the notices it had sent during the first dependency. The juvenile court found that the notices were proper and the ICWA did not apply. After another 18 months, the court terminated reunification services, set a WIC 366.26 hearing, and terminated parental rights. Mother appealed on the basis of inadequate ICWA notices. The agency conceded error, and the court of appeal reversed and remanded for ICWA compliance. On remand, the juvenile court held a hearing and asked if mother or father’s counsel had any objection to the new ICWA notices, and they said no. The juvenile court found that the ICWA did not apply and reinstated the order terminating parental rights. Mother appealed again, on the basis of errors in the second set of ICWA notices. Affirmed. The general rule is that ICWA notice issues can be raised on appeal even if a parent did not raise the issue in the trial court. But when a case is remanded for the sole purpose of ICWA compliance, and parents’ counsel have an opportunity to review the notices and do not object, the parents have forfeited the right to raise ICWA notice issues in a second appeal. (MM).

NON-DEPENDENCY CASES OF INTEREST

Timothy J. v. Superior Court; Dante H. v. Superior Court – filed May 10, 2007, Third District

Docket Nos. C052781; C052711

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C052781.DOC>

In these consolidated cases, two minors with pending delinquency cases filed writ petitions challenging the juvenile courts’ refusal to find them incompetent to stand trial under Ca. Rules of Court, Rule 1498(d). Dante H., age 11, and Timothy J., age 13, were

both alleged to have broken into school buildings and stolen food and other items. Both minors submitted expert testimony that they were not capable of understanding the court proceedings or assisting in their defense. Dante H. was in regular education and of average intelligence; Timothy J. was a special education student. In both cases, the juvenile courts rejected their claims of incompetence because there was no proof of mental illness or disability. Writ granted. It is a violation of due process to require a person who cannot understand court proceedings and assist counsel in his defense to stand trial, regardless of whether the lack of competence is due to mental illness or disability, or simply lack of maturity. (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):

07-17

(REV) JV-290, Caregiver Information Form

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0711JV290InfotoCaregiverRev.doc>

This FYI has been revised to clarify the use of JV-290. The CSW shall include the JV-290, JV-290 Cover Letter, and the JV-280 notice and the *JV-510, proof of service* for the WIC 366.21, 366.22, and the 366.3 Status Review Hearings, *to the child's foster parents (including FFA certified foster parents), relative caregivers or foster parents approved for adoption*, in the caregiver's primary language when available, along with information on how to file the form with the court. (JC)

07-17

Notice of Hearing on Petition

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0717NoticeofHearingPetition.doc>

This FYI advises CSWs to use the revised version of the Notice of Hearing on Petition which identifies and states the nature of the proceedings. (JC)

Procedural Guides:

70-565.10 Child Welfare Services/Case Management System
(CWS/CMS) Clearance

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0070/007056510v0507.doc>

This procedural guide informs CSWs of situations of when he/she must complete a CWS/CMS clearance. (JC)

100-507.60 (REV) Requesting Notification Of Pending Release of an Incarcerated Parent

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010050760v0507.doc>

This revised procedural guide informs CSWs that for cases where the family is receiving family reunification services and a parent is serving a prison term, the CSW should request notice from the California Department of Correction as to when and where the parent will be released on parole.

(JC)

100-510.17 (REV) Counseling/Transitioning a Child Regarding Out-of-Home Placement/Replacement

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010051017V0507.doc>

This revised procedural guide advises CSWs of best practices when moving a child from their home to foster care, or to another placement. (JC)

100-510.35 (REV) Special Placements

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010051035V0507.doc>

This revised procedural guide informs CSWS of definitions of special placements and of procedures to follow when a special placement is being considered (JC)

100-510.50 (REV) Placing Children Six Years of Age or Younger in Congregate Care

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010051050v0507.doc>

This revised procedural guide informs CSWs that children six years of age or younger should never be placed in congregate (group home) care unless exceptional circumstances requires services that only a group home can offer. This procedural guides also informs CSWs of procedures to follow when such an exceptional circumstance arises prior to disposition. (JC)

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

Link to procedure:

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

This 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)

100-560.30 Transitional Housing Program – Plus (THP-PLUS)

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0100/010056030THPv0507.doc>

This procedural guide informs CSWs of the THP-Plus transitional housing placement opportunity for emancipated foster (DCFS/Probation) youth from 18 years of age to under 24 years of age who emancipated from the child welfare system and are at risk of homelessness and informs CSWs of procedures to follow when an emancipated youth seeks THP housing. (JC)

200-509.20 (REV) Pre-Placement Conference

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0200/020050920v0507.doc>

This revised procedural guide informs CSWs of the use of pre-placement conferences where no family members are available to provide permanency. When an approved adoptive family has been identified as a potential adoptive match by PRU (Adoption and Permanency Resources Division's Placement and Recruitment Unit), a pre-placement conference is held involving the CSW, adoption CSW, their respective supervisors, the family assessment worker, his/her supervisor, or the family's outside adoption agency social worker. (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 SCSWs and CSWs of their responsibilities when a dependent child will be leaving California and an adoption home study is needed. (JC)

300-306.05 (REV) Notice of Hearing For Juvenile Court Proceedings

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030605NoticeV0507v2.doc>

This revised procedural guide informs CSWs of who is required to be noticed and by whom when an initial petition has been calendared. (JC)

300-506.08 (REV) Communications with a Child's Attorney

Link to procedure:

<http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030050608V0507.doc>

This procedural guide has been revised to include Los Angeles Dependency Lawyers (LADL) when referring to child's counsel. (JC)