



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

ADOPTABILITY AND SIBLING EXCEPTION – WIC 366.26 (c)(1)(E)

In re Valerie A. – filed Jun. 26, 2007, Fourth Dist., Div. One

Docket No. D049901

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D049901.DOC>

Mother appealed termination of parental rights arguing that she was denied a fair opportunity to litigate the sibling relationship exception to termination of parental rights under Welf. & Inst. Code § 366.26 (c)(1)(E). The mother asserted that the juvenile court erred when it did not make appropriate orders for sibling visitation and contact, thereby irreparably eroding the children's bonds to their older half-sibling Adriana¹. Valerie and Victoria were detained from the mother and initially placed with their maternal grandmother and Adriana for a short period of time. Valerie and Victoria were then placed with another relative and had overnights with the grandmother and Adriana until the visits were suspended due to family tensions. At the § 366.26 hearing, the social worker testified that neither Valerie nor Victoria had a sibling bond with Adriana and that severing the children's relationship with Adriana would not be detrimental to them because the lack of sibling visitation during the last 10 months had not affected them adversely. The grandmother testified that the children always wanted to be with Adriana and Adriana testified that she loved her sisters and missed them. The juvenile court found the children were adoptable and that no exceptions applied to preclude termination of parental rights.

Affirmed. The appellate court found that the lack of sibling visitation did not prevent the mother from litigating the application of the sibling relationship exception. The court of appeal stated that unlike the (c)(1)(a) exception to termination of parental rights, under 366.26 (c)(1)(E), a parent is not required to show as an element of proof that the siblings have maintained regular contact and visitation. Instead, the parent must prove, by a preponderance of the evidence that termination of parental rights would cause "substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship." And to determine the nature and extent of the sibling

¹ On May 30, 2006, this Court held that Adriana qualified as a sibling of Valerie and Victoria within the meaning of subdivision (c)(1)(E) and remanded the case for a new permanency planning hearing.

relationship, the juvenile court is directed to consider three factors, the second which allows the court to consider whether the child shared significant common experiences with a sibling, *or* whether the child has existing bonds with a sibling. Thus, a parent may avoid termination of parental rights by showing that, under alternative factors, a significant sibling relationship existed or exists, and that continued sibling contact may be of greater long-term emotional interest to the child than adoption, which the mother did not show in this case. The appellate court found that the children were raised in the same home for a relatively short period of time and that the trial court reasonably inferred that the experiences Valerie and Victoria shared with Adriana were not as meaningful to them because they were infants and toddlers. In addition, the appellate court found that a plan of legal guardianship or long-term foster care for the children would not guarantee continued sibling visitation due to the family hostilities. (JC)

ETHICS - CONFLICTS ISSUES

In re Jasmine R. – filed Jun. 19, 2007, Second Dist., Div. Five
Docket No. B194714

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B194714.DOC>

CLC appealed an order disqualifying CLC2 from representing one of two siblings while the other sibling was represented by CLC1. Reversed. There was no actual conflict of interest between the siblings, and a mere potential conflict does not disqualify an attorney or firm from representing multiple siblings. Moreover, even if the two siblings did have conflicting interests, CLC1 could still represent one and CLC2 represent the other. CLC's structure and operating procedures comply with *Castro* and *Christian*, and there was no evidence of a breach of ethical walls related to this case, or of pervasive and material violations of ethical walls sufficient to warrant treating CLC as one firm for all purposes. The juvenile court erred in disqualifying CLC based on an "appearance of conflict" standard. (MM)

NON-DEPENDENCY CASES OF INTEREST

SOCIAL WORKERS HAVE ABSOLUTE IMMUNITY FOR VERIFIED STATEMENTS IN DEPENDENCY PETITIONS

Beltran v. Santa Clara County – filed Jun. 25, 2007, Ninth Circuit
Docket No. 05-16976

Link to case: <http://www.ca9.uscourts.gov/ca9/newopinions.nsf/1.2>

Santa Clara County Child Protective Services filed a dependency petition and supporting statement of facts seeking to have the juvenile court take jurisdiction over Coby Beltran, whose mother was believed to suffer from Munchausen Syndrome by Proxy. In addition, the social worker filed a "custody petition" (i.e., warrant request) pursuant to Welf. & Inst. Code § 340 asking for permission to detain Coby, which was granted. At the conclusion of the jurisdictional hearing, the juvenile court dismissed the petition and returned Coby to his parents. The parents and Coby later brought suit against the social worker and her supervisor under 42 U.S.C. § 1983, alleging that the social workers had deliberately fabricated evidence and left out favorable information in the petition documents filed with the juvenile court. The district court held that the social worker and her supervisor were entitled to absolute immunity and granted them summary judgment. The parents and child appealed. Affirmed. The Ninth Circuit, following *Doe v. Lebbos* 348 F.3d 820 (9th Cir. 2003), held that social workers are entitled to absolute immunity for verified statements in petitions filed with a dependency court as well as for any statement of facts submitted with the petitions. One justice dissented. (CS)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

300-306.5 (REV) Notice of Hearing For Juvenile Court Proceedings

Link to Procedure: <http://dcfs.co.la.ca.us/policy/hndbook%20cws/0300/030030605NoticeV0707.doc>

This revised procedural guide informs CSWs of the proper notice procedures for all Juvenile Court proceedings. The new change reflects the recent change in process service provider. (SH)

For Your Information (FYIs):

07-19 Relative and Non-Relative Extended Family Member Approvals: Some Frequently Asked Questions

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0719RelativeApprovalQuestions.doc>

This FYI clarifies some common questions regarding when and if an assessment is required by the Kinship Support Division. The questions involve relative caregivers who are also licensed foster care providers and issues of residence, funding, annual reassessments and legal guardianship. (SH)

07-21 New Service Provider For Process Services Personal Delivery of Termination of Parental Rights (TPR) Hearing Notices

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0721PersonnelServiceProvider.doc>

This FYI informs staff that DCFS no longer uses Yoakum Investigations as the Department's process server. Effective immediately, a new service is in place for all notices except for telegrams. The new server is Electronic Document Processing. (SH)

07-23 Process for Setting up Real Time Captioning for Court Appearances

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0723RealTimeCaptioning.doc>

This FYI instructs SCSWs in the proper procedure for arranging real time captioning for employees who are ordered to appear in court and who have requested this service. (SH)

07-24 WIC 241.1 Dual Jurisdiction (300/602) Pilot Project

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2007/FYI0724DualSupervisionAB129.doc>

This FYI informs staff that DCFS, the Probation Department and the Juvenile Court have created a new 241.1 protocol in light of recent changes in WIC 241.1. Those changes allow a minor to remain a WIC 300 Dependent while also being declared a WIC 602 Ward. (SH)