



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

Vol. 2, No. 6 September 19, 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)

© 2006 by Children's Law Center of Los Angeles ("CLC"). All rights reserved. No part of this newsletter, except those which constitute public records, may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing from CLC. Cases reported may not be final. Case history should be checked before relying on a case. Cases and other material reported are intended for educational purposes only and should not be considered legal advice.

For more information on Children's Law Center, please visit our website at www.clcla.org.

NEW DEPENDENCY CASE LAW

JURISDICTION/DENIAL OF REUNIFICATION SERVICES -- WELF. & INST. CODE §§ 300(f), 361.5(b)(4)

In re Jorgelina E. – filed Sept. 12, 2006, Fourth Dist., Div. One

Docket No. D048461

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D048461.DOC>

Mother appealed the trial court's finding that she caused the death of her niece under Welf. & Inst. Code § 300(f) and the denial of reunification services pursuant to § 361.5(b)(4). Mother lived with her children, boyfriend, sister and 22-month-old niece. Mother was at work and her sister was running an errand when her boyfriend called and said the child had fallen off a bed and was hurt. The child went into cardiac arrest at the hospital and died. The medical examiner listed the child's death as homicide caused by blunt force trauma to her head and abdomen. Mother had knowledge of her boyfriend's prior abuse to her niece and children. The trial court found that mother's failure to protect her niece rose to the level of causing death by neglect because mother was aware of her boyfriend's pattern of abuse and did not take steps to protect her niece. Reversed and remanded. The appellate court found that the Legislature intended § 300(f) to be governed by principles of criminal law, but with a lesser standard of proof, rather than by a civil standard of negligence. The appellate court stated that in addition to neglect, § 300(f) and § 361.5 (b)(4) require a causal connection between the parent's acts or omissions and another child's death. The appellate court concluded that there was insufficient evidence to support mother caused the child's death by neglect because she did not knowingly permit the abuse of her niece to continue and because her actions did not appear to have been "aggravated, reckless or flagrantly negligent." (JC)

NON-DEPENDENCY CASES OF INTEREST

ICWA -- STEPPARENT ADOPTION

Adoption of Hannah S. – filed Sept. 8, 2006, Third Dist.

Docket No. C048581

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C048581.DOC>

Mother petitioned the family court to terminate father's parental rights and allow the stepfather to adopt the child under Fam. Code § 7820 et seq. The father was serving a 27-year prison term for violence against the mother and had a lifetime restraining order against him. The child was an Indian child under ICWA through the father. The father argued that the mother had not shown active efforts to prevent the breakup of the Indian family nor evidence beyond a reasonable doubt, including testimony of an Indian expert, to support the need for termination of parental rights as required by ICWA. (25 U.S.C. §§ 1912(d), 1912(f).) The family court agreed and denied the mother's request. Mother appealed. Reversed.

The trial court erroneously applied a beyond a reasonable doubt standard of proof in deciding whether the mother had made active efforts to rehabilitate the father. The correct standard for active efforts is clear and convincing. "Active efforts are essentially equivalent to reasonable efforts to provide or offer reunification services in a non-ICWA case and must likewise be tailored to the circumstances of the case." Here, the mother's efforts were thwarted by the father's violent behavior towards her. Mother was unable to provide the father with services in prison, and she was not required to place herself or her child in danger by having contact with him. Additionally, the court erred by relying *solely* on the Indian expert's testimony (which supported TPR) in concluding that the mother had not shown the need for TPR beyond a reasonable doubt. The court should have considered all of the evidence before it, which did support that continued custody by the father would be damaging to the child. The court rejected the mother's arguments that the "good cause" exception or the existing Indian family doctrine could be used to avoid applying ICWA's substantive requirements. (CS)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

For Your Information (FYIs):

06-48 Incorporating SDM into Court Reports

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0648SDMinCourtReports.doc>

This FYI informs CSWs of the use of SDM tools to assess safety and risk levels in families they service and how to incorporate the assessments into the court reports. (JC)

06-49 State Program Improvement Plan Parent and Foster Parent Survey

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0649ImprovementPlanSurvey.doc>

This FYI advises CSWs of four waves of a survey to obtain information about the frequency and quality of social work visits with parents and foster care providers. (JC)

06-50 Use of Unauthorized Forms

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2006/FYI0650UnauthorizedForms.doc>

This FYI reminds CSWs that the use of unauthorized forms is prohibited and that they shall only use DCFS authorized forms. (JC)