



# Children's Law Center of Los Angeles

## "DEPENDENCY LEGAL NEWS"

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### NEW DEPENDENCY CASE LAW

#### **ICWA – TRIBAL COURT JURISDICTION**

*In re M.M.* – filed August 28, 2007, First Dist., Div. Five

Docket No. A115771

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A115771.DOC>

M. was detained in February 2005 and placed with relatives. His mother and presumed father were both members of the Hoopa Valley Tribe. This tribe intervened and started the process to enroll M. In February 2006, shortly before the WIC 366.26 hearing, Michael T., a member of the Karuk Tribe, contacted the court, claimed to be M.'s biological father, and requested paternity testing. The juvenile court did not explicitly rule on this request, but stated that there is "only one presumed father" and proceeded to terminate the parental rights of M.'s mother, presumed father, and any other persons claiming to be M.'s parents. In May 2006, the Hoopa Valley tribe performed a paternity test, which confirmed that Michael T. was M.'s biological father. The Karuk tribe then enrolled M. as a member, intervened in the case, and requested transfer of the case to the Karuk Tribal Court. The juvenile court granted the motion in September 2006, and vacated its prior order terminating parental rights, and the case was transferred to tribal court. M. filed a notice of appeal.

Dismissed. Under the ICWA provisions on transfer to tribal courts, and principles of tribal sovereignty, a transfer to tribal court deprives the state courts of jurisdiction. The court of appeal cannot provide any relief after a case has been transferred to tribal court. The only way to avoid this result would be for minor's counsel to request an immediate stay of the transfer order, pending appellate review. (MM)

#### **ICWA – NOTICE; WIC 224.2**

*In re J.T.* – filed August 29, 2007, First Dist., Div. Five

Docket No. A117049

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A117049.DOC>

The mother of a dependent child, J.T., disclosed to the county agency that her birth parents had Indian ancestry. (She was adopted by non-Indian parents.) The agency and county counsel made efforts to unseal mother's adoption records and eventually obtained information about her birth parents. The agency provided notice to some, but not all, the tribes of which J.T. could be a member or eligible for membership. Mother appealed. County agency argued that notice was sufficient because the BIA was also notified.

Reversed, with limited remand for ICWA compliance. Notices to BIA are not sufficient because WIC 224.2 sets a higher standard than ICWA. Also, the agency failed to address the notices to the tribal chairperson or other designated agent; this is important to ensure that someone trained to make the ICWA determination actually receives the notice. (MM)

### **NON-CUSTODIAL PARENT; DENIAL OF REUNIFICATION SERVICES; WIC § 361.2**

***R.S. v. Superior Court*** – filed September 5, 2007, Second Dist., Div. Eight  
Docket No. B199111

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B199111.DOC>

Father filed a petition for extraordinary writ seeking review of the juvenile court's order denying him family reunification services and setting a hearing under Welf. & Inst. Code § 366.26. Parents failed to reunify with two older children and their parental rights were terminated in July 2004. In November 2004, mother gave birth to E.S. and a petition was filed in October 2006, alleging mother's physical abuse, parents' prior termination of parental rights for siblings, and father's history of domestic violence. Father had not seen mother for over a year at the filing of the petition. Father told the social worker he wanted custody of E.S. but did not testify to such during the trial. The juvenile court denied father reunification services under section 361.5, subdivision (b)(10) and (11) because of his unresolved history of domestic violence. Petition granted. The appellate court found that because father was a non-custodial parent, the juvenile court was bound to apply the provisions of section 361.2, and not section 361.5. Citing to *Robert L.* (1996) 45 Cal.App.4<sup>th</sup> 619 and *In re Terry H.* (1994) 27 Cal.App.4<sup>th</sup> 1847, the appellate court stated that a non-custodial parent is not entitled to reunification services if he does not seek custody, and if that parent seeks custody, the court must determine whether reunification is appropriate. The juvenile court was directed to determine whether father is seeking custody and make the appropriate findings under section 361.2. (JC)

### **OTHER LEGAL DEVELOPMENTS**

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

#### **For Your Information (FYIs):**

#### **Procedural Guides:**

0300-503.20 (REV) Writing the WIC 366.26 Hearing Report

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050320WI26Reptv0907.doc>

This procedural guide has been revised to clarify how ICPC procedures should be outlined in the WIC 366.26 report if, under the provisions of ICPC, the adoption home study cannot be initiated until the child has been legally freed. (SA)

E080-0590. (REV) Permanent Residence Under Color Of Law (PRUCOL) And Special Immigration Status

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E080/E0800590PRUCOLv0907.doc>

This procedural guide has been revised to include more recent regulation references, add updated terminology, and updated departmental names. It explains the timeline and procedure for applying for PRUCOL, a public benefits eligibility category, and for Special Immigration Status for foster children. (SA)