



Children's Law Center of Los Angeles

"DEPENDENCY LEGAL NEWS"

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NEW DEPENDENCY CASE LAW

ATTORNEYS, EFFECTIVE ASSISTANCE, WIC § 317(e)

In re Kristen B. – Filed June 18, 2008, Fourth Dist., Division One

Docket No. D051932

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/D051932.DOC>

Kristen B., age 14, was removed from home after reporting sexual abuse by stepfather. She made consistent statements about the abuse to several social workers and investigators, and her brother and grandmother also said they had seen the stepfather act inappropriately toward Kristen. Shortly before the jurisdictional hearing, and shortly after an unauthorized unmonitored visit with mother, Kristen B. recanted. On direct examination by her attorney, Kristen said she had lied about the sexual abuse and wanted to return home. Her attorney asked whether she had discussed the case with mother. Kristen said she had not, and her attorney then asked: "So, again, this is the first time you had been alone with your mom in a while. So how can we believe that you didn't talk about--" The court struck the question as argumentative. In closing argument, the attorney stated Kristen's position that she had not been abused and wanted to return home, but argued that return home would be contrary to Kristen's safety and best interests. The court sustained the petition. Mother appealed, contending that Kristen's attorney was ineffective.

Affirmed. Kristen's attorney complied with WIC 317(e) by both stating Kristen's position to the court, and advocating for a contrary position that she believed to be in Kristen's best interests. The attorney sought to elicit testimony that would help the court evaluate the truth of either the sexual abuse report or the recantation. One argumentative question did not show Kristen's counsel failed to act as a reasonably competent attorney. Also, mother did not show prejudice. Kristen's prior statements were consistent and credible, and there was corroborating evidence, so the allegedly ineffective actions of Kristen's attorney were unlikely to have affected the outcome of the case. (MM)

DENIAL OF REUNIFICATION SERVICES

In re William B. – filed May 14, 2008, Fourth Dist., Div. Three

Docket No. G039351

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G039351.DOC>

Children and agency appealed juvenile court's order granting mother reunification services. Parents met in a recovery home in 1996. Mother previously lost custody of two daughters due to drunkenness and child endangerment. William and Noah were first removed from their parents in November 2001 when Noah was born with a positive toxicology screen for methamphetamines. After 8 months of reunification services, the boys were returned to their parents. In June 2003, the mother was arrested for drug use and possession of paraphernalia and the boys were removed in May 2004 when the parents were arrested for burglary and violations of court orders to refrain from drugs and alcohol. After almost 18 months, the children were returned to their parents and the court terminated jurisdiction in August 2006. Six months later, the parents were arrested for being under the influence of drugs and having drugs and paraphernalia within reach of the children. The parents were incarcerated and the children were again removed from their care. At the jurisdiction/disposition hearing, William, 10, testified that "things just got worse and worse" when he was living with his parents and he was afraid that things would go back to the same way if he returned to his mother and also told the court he loved his mother and loved to see her. Noah, 5, stated that he hated his father, did not want to see him, and he loved his mom and liked to have visits with her. The juvenile court noted the boys were afraid of their father, were not bonded to him, and terminated his reunification services. The juvenile court did not want to terminate services for the mother because the boys testified they loved her and wanted to be with her. The court found that reunification services were not required under WIC 361.5(b)(13) because both parents fell within the exception, but found that services for the mother were in the best interests of the children.

Reversed in part and affirmed in part. The appellate court found that the juvenile court improperly focused on the children's love for their mother rather than any realistic chance of permanence and stability when it granted her reunification services. The appellate court stated that the trial court did not apply the correct standards when deciding whether reunification services would be in the boys' best interests. Mother had been involved in substance abuse since she was 14 years old, lost custody of her girls due to alcohol abuse, and then repeatedly failed to overcome her drug addiction despite years of reunification services and effort on her part. In addition, the children's bond to the mother cannot be the sole basis for a best interest finding and the juvenile court failed to consider the children's need for stability and continuity. The appellate court stated that at least part of the best interest analysis must be a finding that further reunification services have a likelihood of success. The best interests of the children are not served by merely postponing their chance for stability and continuity and subjecting them to another failed placement with their parent. Despite father's argument that WIC 361.5(b)(13) did not apply to him because he completed his court-ordered treatment, the appellate court found that ample evidence supported father resisting treatment within the three years immediately preceding the current petition because he resumed drug use after completing drug programs. The order granting mother reunification services is reversed and denying father reunification services is affirmed. (JC)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-22 Special Placements and One-On-One Services

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0822SpecialPlacements.doc>

This FYI is to remind staff of the procedures to obtain authorization to have a child placed in a specialized or non- contracted placement and the procedure for requesting one-on-one services for a child. (SA)

08-27 TDM Participants- Who Can Attend

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0827TDMParticipants.doc>

This FYI explains the purpose of a TDM and who is allowed to attend. (SA)

Procedural Guides:

0080-502.10 (REV) Initial Case Plan

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050210v0608.doc>

This procedural guide was revised with updated information on creating a case plan. (SA)

0080-504.20 (REV) Case Plan Update

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050420v0608.doc>

This procedural guide was revised with updated information on how to create and update a case plan, including instructions on referring a case to MAT once a child is detained, the goal of a case plan when out-of-home services are used for reunification purposes pursuant to WIC 16501.1(f)(9), updated information on referring children for TILP, information on Voluntary Family Maintenance, and information on other services. (SA)

0080-506.16 Obtaining Services for Incarcerated/Institutionalized Parents

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050616v0608.doc>

This procedural guide explains when a parent should and should not be offered reunification services pursuant to WIC 361.5(e), explains the types of services that can be provided including visitation, and provides instructions to CSWs on providing reasonable services to incarcerated parents. This procedural guide also provides instructions on how to proceed if a parent is incarcerated after reunification services are ordered. (SA)

0100-510.35 (REV) Special Placements

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051035v0608.doc>

This procedural guide was updated to inform staff that Assembly Bill 1462 added WIC 11402.6 allowing the payment of Aid to Families with Dependent Children- Foster Care (AFDC-FC) benefits for children who are both AFDC-FC recipients and Regional Center clients placed in a For-Profit childcare facility. (SA)

0100-510.60 (REV) Placement Preference For Children In Out-Of-Home Care

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051060v0608.doc>

This procedural guide, which provides guidelines on placement of detained children, no longer has the outdated list of Dually Licensed Foster Family Agencies. (SA)

0100-520.11 (REV) When A Child Is Residing In The Home Of A Relative Or Non Relative Extended Family Member That Does Not Meet Title 22 Approval Standards

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052011v608.doc>

This procedural guide was revised to reflect the Adam Walsh Child Protection and Safety Act, which requires DCFS staff to assess the results of out-of-state Child Abuse Registries for individuals who resided out-of-state within the past five years. Also, this guide notes that the Kinship Support Division is now called the ASFA Division. (SA)

0200-511.05 (REV) Initiating Adoption Assistance Program (AAP) And Medi-Cal Benefits

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020051105v0608.doc>

This procedural guide was revised to reflect current practice of assessing and providing AAP benefits to adoptive parents. In addition, instructions were added for Regional Center. (SA)

0300-303.15 (REV) Writing The Detention Report

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030315v0608.doc>

This procedural guide was updated to inform social workers about information to include in the detention report including information about up front assessments done on the family. It also provides the updated procedure for notifying parties of the detention hearing, information regarding ICWA forms, and information on requesting MAT assessments in court. Note: Upfront Assessment Services are services a family receives immediately after DCFS becomes involved.) (SA)

0300-503.10 (REV) Writing the Jurisdictional/Dispositional Hearing Report

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050310v0608.doc>

This procedural guide was updated to inform social workers about information to include in the Jurisdictional/Dispositional Report, such as, preference for relative placement, required information to be provided to relative caregivers, out-of state placement information, ICWA inquiries, education information, child's health information and Body Mass Index (BMI), required information about SSI disability screening, information regarding SSI to emancipating youth, information about the Multidisciplinary Assessment Team (MAT), and information about Upfront Assessment and Concurrent Planning Assessment (CPA). (Note: CPA is DCFS's goal of placing the child in the home that will provide the option of legal permanency as soon as possible even if the family is still receiving reunification services.) (SA)

0300-508.30 (REV) Placement With Relatives: Informing The Court Of Recurring Efforts To Locate Relatives

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050830v0608.doc>

This procedural guide was revised to include procedures to allow DCFS staff to release information to relatives of former dependent children who were adopted but the adoption has failed, for placement purposes. (SA)

0600-500.05 Multidisciplinary Assessment Team (MAT)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050005MATv0608.doc>

This procedural guide explains the goal of a MAT assessment, the criteria for eligibility, the referral process, the duties of the people involved in conducting the assessment, the procedure for completing a MAT, and information on re-assessments. (Note: MAT is a collaboration between DCFS and the Department of Mental Health designed to ensure immediate and comprehensive assessment of children entering out-of-home placement. MAT assessment is used to determine the services most needed by the children, find most appropriate placement, and to minimize the duration of placement.) (SA)

0600-500.10 (REV) Reducing The Threat Of Infection By Blood-Borne Pathogens And Communicable Diseases: Universal Precautions

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050010v0608.doc>

This procedural guide was updated with information about Staphylococcus aureus, including causes and prevention. (SA)

0600-509.00 Dependency, Drug Court (DDC) / Family Substance Abuse Treatment Program (FSATP)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050900DependencyDrugCourt0608.doc>

This procedural guide explains the drug court process, including the DCFS Spas that are participating in the program, the courtrooms the cases will be heard in, the process of identifying drug cases, the responsibilities of the case workers, and the format of court hearings. (SA)

0600-513.10 (REV) Medical Case Management Services (MCMS) Unit: Intake / Transfer C
Criteria And Transfer Procedures

Link to Procedure: <http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060051310v0608.doc>

This procedural guide was revised to reflect the name change from Medical Placement Unit (MPU) to Medical Case Management Unit (MCMS), revised procedures for Concurrent Planning Redesign and Point of Engagement (POE), added instructions on current procedures for transferring children to MCMS, and listed required forms and related policies. (SA)

0900-511.10 (REV) AFDC-FC / GRI-FC Rates

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090051110FCRatesv0608.doc>

This procedural guide was revised to include Whole Family Foster Home and Shared Responsibility Plan rates. (Note: Whole Family Foster Homes provide foster care to dependent teen parents and their non-dependent children, while assisting the teen parent's to develop the skills they will need to provide a safe, stable and permanent home for their children. It can be a family home, approved relative caregiver, non-relative extended family member's home, or the home of a non-related legal guardian whose guardianship was established pursuant to WIC Section 366.26 or 360. Shared Responsibility Plan is a plan to help develop the parent-child bond, assist the teen parent in her/his transition to independence, and create a successful, supportive and nurturing placement for both the teen and the child.) (SA)

0900-511.12 (REV) Regional Center Foster Rates For Dual Agency Children

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090051112RegionalCenterratev0608.doc>

This procedural guide was revised to include information regarding dual agency children who receive Adoption Assistance Program Benefits or Aid to Families With Dependent Children- Foster Care because they are consumers of Regional Center services. (SA)

1200-503.20 (REV) Creating A Case Without A Referral

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050320v0608.doc>

This procedural guide, which explains to CSWs how to create a child abuse and neglect case without a generating a referral through the Child Protection Hotline, was revised to reflect changes in the way Substantial Risk is used as an allegation per Assembly Bill 673 and ACL 07-52. Also, instructions directing DCFS staff to contact the Child Protection Hotline when there are allegations of "substantial risk of harm" were removed. (SA)