



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA; CONTINUANCES; SUFFICIENCY OF PETITION AND CURRENT RISK

In re David H.- filed August 19, 2008 , Fist Dist., Div. 5

Docket No. A118968

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A118968.DOC>

After sustaining the dependency petition, the court set aside jurisdiction/disposition findings and set a new hearing to correct ICWA violations. It found exceptional circumstances existed under WIC 352(b) to hold the disposition hearing more than 60 days after the detention hearing and extraordinary circumstances existed to justify temporary emergency custody of David for more than 90 days following initial removal. The court also appointed new counsel for mother. Prior to the jurisdiction/disposition hearing, mother's counsel requested a continuance of the hearing for personal issues, requested that the WIC 300 petition be dismissed because the hearing would not be completed within 6 months of detention, and requested to be relieved. The court again appointed new counsel for mother and continued the hearing but not to the date mother requested. At the new jurisdiction/disposition hearing, which commenced on the 6 month date, the court sustained the petition. Mother appealed.

Affirmed. The trial court did not abuse its discretion by denying mother's continuance request because a continuance to the date mother requested would have caused the disposition to be held more than six months after the detention hearing. WIC 352(b) prohibits any continuances that would cause the disposition hearing to be completed more than six months after the detention hearing. Mother also forfeited her claim that under ICWA, parents have an automatic right to a 20-day continuance of a jurisdiction hearing from 10 days after receiving notice of the hearing, because her attorney never made a continuance request under ICWA.

25 USC 1912(a) states that no foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent, and the parent is entitled to a 20 day continuance after that upon request. Further, the denial was not prejudicial because mother would have only received one extra day if the court had granted a continuance.

Mother also forfeited her claim that the WIC 300 petition did not show David was at risk of harm at the time of the second jurisdiction/disposition hearing by not raising the issue in the trial court. Code of Civil Procedure 430.80 which allows a party to challenge the facial sufficiency of a petition on appeal without raising the issue in the trial court does not apply to dependency proceedings. Regardless, the petition was facially sufficient because it alleged that David *had suffered* serious physical harm (bruises, red marks, welts, and broken skin) inflicted intentionally by mother with belts, cords, or rulers. In the absence of unusual circumstances, an allegation that a child *has suffered* serious physical harm inflicted non accidentally by a parent or guardian is sufficient to establish jurisdiction under WIC 300(a). Even if a petition must allege a current substantial risk of harm to establish jurisdiction, the evidence at the new hearing showed current risk of physical abuse by mother. Mother only had supervised contact with David after removal, she had not resolved her psychological issues which caused her to resort to physical abuse for discipline, she still had difficulty controlling her behavior around David, and several experts concluded David could not be returned home safely. (SA)

PERMANENCY PLANNING HEARING

Sheri T. v. Superior Court – filed July 22, 2008, Fourth Dist., Div. Three
Docket No. G040245

Link to case: <<http://www.courtinfo.ca.gov/opinions/documents/G040245.DOC>>

Mother sought extraordinary relief from the juvenile court's order setting a new permanent plan selection hearing after it previously found by clear and convincing evidence that the termination of parental rights would be detrimental to the child. Taylor was removed from her parents' care in October 2004 when they were arrested and incarcerated, leaving her with no caretaker. Taylor was returned to her mother's care in July 2005 and re-detained in December 2006 when the social worker found a crack pipe in mother's apartment. The juvenile court sustained the supplemental petition, denied further reunification services to the mother, and set a permanent plan selection hearing. At the 366.26 hearing in October 2007, the maternal grandparents and caretakers for Taylor stated they were inappropriate for long-term care due to their age and medical conditions. The juvenile court stated that the mother and child had a strong bond and loving attachment and pursuant to stipulation by all parties, found termination of parental rights would be detrimental to Taylor due to her beneficial relationship with the mother. Taylor was ordered into long-term foster care. In April 2008, the social worker recommended that the juvenile court schedule another permanent plan selection hearing. The maternal grandparents wanted to adopt Taylor and had a doctor's letter stating that the maternal grandmother's health was not a concern and she was capable of taking care of Taylor. In addition, the mother had once again been terminated from her drug treatment program and had much less contact with Taylor. At the review hearing, mother

objected to a new 366.26 hearing and asked for a hearing on whether a hearing should be held. As her offer of proof, mother stated through counsel that all parties previously stipulated to beneficial relationship exception. The juvenile court denied the request for a hearing and set a new 366.26 hearing.

Petition denied. The appellate court stated that the juvenile court did not abuse its discretion by setting a new permanent plan selection hearing. The appellate court stated that while the juvenile court is mandated to order a new permanent plan selection hearing every 12 months, unless such a hearing is not in the child's best interest, it may order a new permanent plan selection hearing more frequently if circumstances have changed. In this case, the mother's contact with Taylor lessened and the grandparents were willing to adopt her. Where circumstances have changed, the juvenile court should hold a permanent plan selection hearing unless the mother proved there was a compelling reason not to do so. In addition, the mother was not entitled to an absolute right to an evidentiary hearing to carry her burden. The juvenile court properly asked for an offer of proof which was inadequate to compel a hearing. Lastly, the mother was not prejudiced by the court's order because she would have the opportunity to fully litigate the issues at the hearing. (JC)

SECTION 366.3—CHANGE OF PERMANENT PLAN

David L. v. Superior Court--filed July 31, 2008, Fourth Dist., Div. Three
Docket No. G040284

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G040284.DOC>

Father and mother pleaded no contest to county agency's allegations of general neglect, and child was placed with grandmother. Pursuant to the parties' stipulation, the court set a section 366.26 hearing and appointed grandmother child's legal guardian, with weekly visitation for father and mother. After child had been in grandmother's care for approximately a year, the social worker changed her recommendation to favor adoption as the permanent plan. This was based on child's statement that she wanted grandmother's home to be her "forever home," and on grandmother's belief that guardianship did not provide enough "peace" for the child. The juvenile court concluded the agency had presented a prima facie case warranting a new section 366.26 hearing. Father filed a petition for writ of mandate arguing that the juvenile court exceeded its authority by setting a new section 366.26 hearing absent a section 388 petition.

Petition denied. A section 388 petition is required where a party seeks to terminate a legal guardianship pursuant to section 366.3(b) and Cal. Rule of Court 5.740(c). However, under WIC 366.3(c), following the establishment of a legal guardianship, if the county agency becomes aware of circumstances that indicate adoption may be an appropriate plan for a child, the agency must inform the juvenile court, which "may" order that a hearing be held pursuant to section 366.26. Under these circumstances, section 366.3(c) allows the court to hold a new 366.26 without filing a section 388 petition. Further, under section 366.3(c), the juvenile court correctly utilized the prima facie standard in deciding to set the 366.26 hearing. (PB)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guide:

0050-503.60 (REV) Child Protection Hotline (CPH): Referrals Regarding Youth on Probation Residing in Out-of Home Care

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050360ProbationReferralV0808.doc>

This procedural guide was updated with the procedure for DCFS staff to input the results of Probation's child abuse investigation into DCFS's database when there has been a report of abuse for a probation ward in out-of-home placement. In addition, the title of this Procedural Guide has been changed and reference to referrals regarding Kin-GAP cases have been removed as it is addressed in other Procedural Guides. (SA)

0070-548.05 (REV) Emergency Response Referrals Alleging Abuse in Out-of-Home Care Regarding Children Who are Under DCFS Supervision

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054805v0808.doc>

This procedural guide was updated to notify CSWs that it is not necessary to notify the ASFA Division of ER investigations on out-of-home placements/caregivers because the ASFA Division is already required to review DCFS's database to determine any prior referrals regarding the caregiver. (SA)

0700-502.10 (REV) Referring Children to Healthy Start

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0700/070050210V0908.doc>

This procedural guide was revised to reflect the name change of the DCFS Health & Education Website to Youth Education Support Website. DCFS staff must consult with a Regional Education Consultant, which can be found on the website (http://lacdcfs.org/health_education/index.html) if the school does not have a participating Healthy Start Program or if the child does not qualify for Healthy Start Services. The Healthy Start Programs were created to provide comprehensive school-integrated services to children to remove barriers to healthy productive lives. (SA)