



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA

In re Shane G.- filed August 26, 2008 and partially published September 23, 2008, Fourth Dist., Div. 1

Docket No. D052632

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D052632.DOC>

Prior to the WIC 366.26 hearing, mother stated she might have Comanche heritage although she and her children were not enrolled in the tribe. At the contested WIC 366.26 hearing, the court noted that it previously found ICWA did not apply to Shane's older half sibling from his mother's side based on a letter from the tribe that the sibling was ineligible for membership because she did not have at least 1/8 blood quantum level as required by the tribe. There was also a later finding that ICWA did not apply to any of the other siblings on the case but no ICWA notices were found as to Shane. However, questioning of maternal grandmother revealed that ICWA did not apply to Shane. At the hearing, the juvenile court found the agency performed a reasonable ICWA inquiry and ICWA did not apply, and terminated parental rights. Mother appealed.

Affirmed. Under ICWA, a child is an Indian child if he or she is a member of a tribe *or* eligible for membership and the biological child of a member of a tribe (25 USC 1904(4)). When a court knows or has reason to know that an Indian child is involved in dependency proceedings, it has a duty under ICWA to provide notices to the child's tribe. If there is insufficient reason to believe the child is an Indian child, notice need not be given. Here, although there was some confusion regarding ICWA notices sent to the Comanche tribe as to Shane and no notices or return receipts could be found, the agency had performed a

reasonable ICWA inquiry and determined that there was no reason to believe Shane was an Indian child. The social worker interviewed the maternal grandmother who indicated that Shane's great-great-great grandmother was a Comanche princess but stated no one in the family lived on a reservation, attended an Indian school, participated in Indian ceremonies, or received services from an Indian health clinic. Also, the Comanche tribe requires 1/8 Comanche heritage and Shane had 1/64 heritage. Thus, notice to the Comanche tribe was not required. Where, as here, the record is devoid of any evidence a child is an Indian child, reversing the termination of parental rights for the sole purpose of sending notice to the tribe would delay permanency for the child rather than further the important goals and ensure the procedural safeguards intended by ICWA. (SA)

REUNIFICATION SERVICES, WIC 366.21(e)

M.V. v. Superior Court. – Filed Sept. 30, 2008, Fourth Dist., Division Three
Docket No. G040676

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G040676.DOC>

Two-year old child was detained because mother was incarcerated on charges of sexual contact with 15-year-old boy. Four months later, mother was deported to Mexico. She notified the county agency of her location and participated in services with the local Mexican child welfare agency. At six-month review hearing, mother's counsel argued that she had complied as much as possible with her case plan. Juvenile court found that there was not a substantial probability that the child would be returned to mother within 12 months, terminated services, and set a WIC 366.26 hearing. Mother filed writ petition.

Writ granted. Under WIC 366.21(e), if court finds that parent failed to participate regularly and make substantive progress on case plan, court may set a WIC 366.26 hearing. However, if the court finds either a substantial probability that child may be returned to parent within six months, or a lack of reasonable services, the court must continue services to the 12-month date. Juvenile court erred by using the WIC 366.21(g)(1) standard to make the 366.21(e) "substantial probability" determination. WIC 366.21(g)(1) requires the court to determine whether there is a substantial probability that the child *will* be returned by the 18-month date, based on findings that the parent has visited regularly, made significant progress, and shown the ability to comply with the case plan and provide for the child's safety and well-being. In contrast, WIC 366.21(e) requires the court to determine whether there is a substantial probability that the child *may* be returned by the 12-month date. In making this finding, the court is not limited to the three factors listed in 366.21(g)(1), but may consider any relevant evidence, including evidence of extenuating circumstances (such as mother's deportation, inability to visit, and the limited services available in Mexico). (MM)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-40 On-Site DNA Testing At Children's Court

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0840OnsiteDNAtestingCourt.doc>
This FYI advises DCFS staff that LabCorp will be conducting DNA testing every Friday from 9:00 A.M. to 11:00 A.M. in room 2710 on the second floor of the Children's Court. The office will be staffed by bi-lingual (spanish speaking) phlebotomists. LabCorp will only provide testing if they have received a signed and filed copy of the Order Appointing Expert (Appointment Pursuant to Evidence Code Section 730). **There will be no exceptions.** At this time there will be **NO SAME DAY TESTING.** All appointments must be scheduled in advance and parties will be ordered to appear for testing on a specific Friday at 9:00 A.M. Each party will be expected to present a photo identification such as a Driver's License, California DMV identification card or passport. If the party has no photo identification and their attorney is not available to come to the testing office for the purpose of identifying the party, the courtroom will be notified. (SA)

08-41 Expanded Access to College Financial Aid for Former Foster Youth

Link to FYI:
<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0841ExpandedAccessColleagueFinacialAidFormerFosterYouth.doc>
According to this FYI, Section 604 (a)(2) of Public Law 110-84 amends the definition of an "independent student" in federal law so that as of July 2009, children who are adopted from foster care after their 13th birthday will not have to include their parents' income in the calculations for determining their need for financial aid. (SA)

08-43 Child Abduction and Recovery Crisis Counseling for Recovered Youth

Link to FYI:
<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0841ExpandedAccessColleagueFinacialAidFormerFosterYouth.doc>
This FYI is to remind CSWs of the existence of the "Los Angeles County Child Abduction Multi-Disciplinary Team" and its coordinating agency, "Find the Children" (FTC), which assist in efforts to locate missing children. This FYI also reminds staff of the protocols for obtaining crisis counseling for children that have been found. (Note: The Juvenile Court Services Child Abduction Liaison's contact numbers are (323) 881-1313 or 881-1352). (SA)

Procedural Guide:

0100-520.10 (REV) Evaluating a Prospective Caregiver

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052010V1008.doc>

This procedural guide was updated to reflect the current duties of the ASFA Division staff and the Regional staff. (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/0100/010052011v1008.doc>

This procedural guide was revised to set forth an immediate review process to address situations where the CSW disagrees with the ASFA Division's denial of a home and wishes to continue placement of the child in the home. Also, instructions have been included informing CSWs that they must not ask the court, minor's counsel, opposing counsel, or CASA for an order to prevent the removal of a child from a home that does not meet ASFA requirements. (SA)

0100-520.70 (REV) Exemptions for Relatives, Non-Relative Extended Family Members, and Prospective Guardians with Criminal History Records

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052070ExmptV1008.doc>

This procedural guide has been updated with the provisions of the Adam Walsh Child Protection and Safety Act (AB 2651), which has added additional crimes for which an exemption **may not be granted**. This guide has a table that lists all non-exemptible crimes, certain crimes for which an exemption may be granted if five years have passed since the conviction, and crimes for which an exemption may be granted under specified circumstances only. It also has an "Exemption Decision Chart" for CSWs to assess when an exemption may be granted. (SA)