



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

WIC 366.26(c)(4)

In re S.J.- filed October 22, 2008, Fourth Dist., Div. 2

Docket No. E042695

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/E042695.DOC>

After the children were removed from mother a second time, the juvenile court instituted a plan of legal guardianship, ordered that visitation between the mother and children be determined by the legal guardian, and terminated jurisdiction. Approximately 6 years later, mother filed three WIC 388 petitions requesting “frequent and liberal” visitation with a court ordered visitation schedule, or return of the children to her or relatives. For changed circumstances, she stated that after she moved out of the city where the children lived, unsupervised visitation had been too sporadic. As for best interest, she said that the children needed to meet their biological relatives, a relationship with her and the paternal grandmother would significantly affect their social and economic welfare, the children needed to compare the benefits of living with biological relatives versus living in foster care, and that the legal guardian disagreed with mother’s request and would not allow the children to visit with their biological relatives. The court set the matter for a hearing, and at the hearing, it denied mother’s request to change the visitation order based upon the social worker’s report and the children’s statements. Mother appealed.

Affirmed. The juvenile court did not summarily deny mother’s petitions, but actually held a hearing on the petitions, allowed all parties to present their arguments, and nothing in the record shows that the court denied mother the opportunity to present witnesses.

Further, the court did not abuse its discretion by denying the WIC 388 petitions. Although mother's move was a changed circumstance, she did not file the petitions until four years after she moved, and she and her attorney failed to show at the hearing that her request was in the best interest of the children. To the contrary, the evidence showed that the mother exhibited erratic behavior such as name calling, sending hate mail, and making false allegations to the police about the legal guardian. Mother was hospitalized for mental instability one year before the hearing, needed to take several medications to stabilize her bipolar disorder, and was not in therapy. Moreover, nothing in the evidence shows that the legal guardian did not allow the visits to occur and her only restrictions were for the safety of the children. Also, during the visits the mother spent time running personal errands and sleeping instead of spending quality time with the children.

Further, WIC 366.26(c)(4)(C), which requires the court to make an order for visitation with the parent unless detrimental once the court orders legal guardianship or long-term foster care, does not apply here. At the time the juvenile court ordered legal guardianship and gave authority to the legal guardian to determine visitation, WIC 366.26(c)(4) only required the court to make a specific visitation order when the child was placed in long-term foster care and allowed the court to delegate authority to determine visitation to a legal guardian. However, after the court granted legal guardianship but before mother filed the WIC 388 petitions, the Legislature amended WIC 366.26(c)(4) by adding subsection (C) which now requires the juvenile court to make specific visitation orders in both long-term foster care placements and legal guardianships. However, when filing her WIC 388 petitions, mother did not rely upon the amendment as a basis to modify the visitation order, and even if she had, there is no indication that the Legislature intended the amendment to apply retroactively. Mother is also incorrect in asserting that the amendment was a clarification and not modification of the law. Finally, denial of the WIC 388 petitions was not a visitation order itself to which WIC 366.26(c)(4)(C) applies, denial simply resulted in leaving the visitation order intact. (SA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

08-46 Forms Posting Update

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0846FormsUpdate.doc>

This FYI lists new/revised forms that were posted to LA Kids and to DCFS's database in the past month. (SA)

08-47 Completing the DCFS 5649, Indian Ancestry Questionnaire

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0847ICWAReminder.doc>

This FYI reminds DCFS staff to conduct an inquiry for American Indian Heritage for every family served by DCFS during initial contact and especially when placement is imminent. It also lists the circumstances that may provide DCFS reason to know the child is an Indian child. (SA)

08-48 Integrated Financial System (IFS) Child Support Module Upgrade

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0848CW51EW.doc>

This FYI is to advise staff that on November 1, 2008, the Los Angeles County Child Support Services Department will transition to the new Statewide California Child Support Automated System (CCSAS) which will allow all California counties to share information in order to more effectively manage child support cases. Further, beginning October 27, 2008, child support referrals will be generated from the CW 51 documentation in the CWS/CMS case record. (SA)

08-49 New Child Support Referral Procedure Change

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0849CW51CSW.doc>

This FYI is to advise staff that on November 1, 2008, the Los Angeles County Child Support Services Department will transition to the new Statewide California Child Support Automated System (CCSAS) which will allow all California counties to share information in order to more effectively manage child support cases. Further, beginning October 27, 2008, child support referrals will be generated from the CW 51 documentation in the CWS/CMS case record. (SA)

08-51 DCFS Transitional Housing Program (THP) Update

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0851TransitionalHousingProgram.doc>

This FYI is to advise staff that **effective immediately**, the DCFS Transitional Housing Program (THP) for Homeless Young People may ONLY accept youth from the following living situations although it will continue to support regional staff to find appropriate transitional housing for youth emancipating from foster care:

- Persons who came from the street or other locations not meant for human habitation
- Person who came from Emergency Shelters
- Person who came from Safe Havens (a flexible-stay shelter that serves homeless and mentally ill people)
- Persons in transitional housing programs who came directly from the street, Emergency Shelters, or Safe Havens

Attached to this FYI are lists of other transitional housing providers for youth, youth with mental health issues, and pregnant and/or parenting youth. These programs are able to accept youth directly from foster care placement. (SA)

Procedural Guide:

0200-506.20 (REV) Grievance Procedures for Denial or Withdrawal of Approval of Applicant Adoption Assessments

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050620v1008.doc>

This procedural guide was updated with the current process for DCFS staff to follow when an applicant's adoption home study has been denied or DCFS has decided to rescind or withdraw approval of a completed home study. (SA)

0300-503.21 Concurrent Planning & Termination of Parental Rights (TPR)- Related Activities

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050321v1008.doc>

This procedural guide was updated with instructions to reflect revised Concurrent Planning Redesign (CPR) procedures such as the implementation of centralized TPR filing. Also, instructions for non-CPR offices were deleted because CPR has rolled out countywide. (SA)

0300-503.25 (REV) Removing a Child From the Home of a Prospective Adoptive Parent(s)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050325v1008.doc>

This procedural guide was updated with instructions to indicate that the JV 326 form shall be sent to Court *at the same time* the JV- 323 or JV- 324 form is sent to Court, indicating that a notice of intent to remove or of an emergency removal was provided to the required parties. It also clarifies that when applicable, another JV-326 form shall be sent to Court as proof of notice of hearing. (SA)