



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

Vol. 4, No. 24 January 13, 2009

Issued by the Children's Law Center of Los Angeles the second and fourth Tuesday of each month

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### **NEW DEPENDENCY CASE LAW**

#### **ADOPTABILITY**

***In re R.C.*** – filed December 19, 2008, Fourth Dist., Div. One

Docket No. D052698

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D052698.DOC>

Mother appealed termination of parental rights and challenged the sufficiency of the evidence to support the juvenile court's finding that R.C. was adoptable. In an assessment report by the agency, the social worker recommended adoption and stated that R.C. was adoptable because he was a cute, healthy and happy 11-month old boy with a great disposition. Also, there were many families willing to adopt a child with his characteristics and the social worker testified that there were 43 approved prospective adoptive families for R.C. R.C.'s current caregivers were also committed to adopting him. The juvenile court found R.C. was likely to be adopted and that none of the exceptions to section 366.26, subdivision (c)(1) applied to preclude termination of parental rights. In her appeal, mother argued that R.C. was not generally adoptable based on (1) his drug exposure, speech delays and the lack of information about his paternity, (2) evidence as to the prospective adoptive families being unreliable and inadmissible, and (3) the existence of legal impediments to the caregivers' ability to adopt.

Affirmed. The appellate court stated that in determining adoptability, the focus is on whether a child's age, physical condition and emotional state will create difficulty in locating a family willing to adopt. To be considered adoptable, a child need not be in a prospective adoptive home and there need not be a prospective adoptive parent “waiting in the wings.” The appellate court stated that a caregiver's willingness to adopt serves as further evidence the child is likely to be adopted within a reasonable time either by the caregiver or by some other

family. The appellate court found substantial evidence supported the juvenile court's finding R.C. was generally adoptable. Although R.C. experienced symptoms of drug exposure at birth, he completed six weeks of treatment and began to grow and develop into a beautiful, happy and healthy baby. Regarding mother's claim that the social worker's testimony about 43 families available to adopt R.C. was unreliable and inadmissible, the appellate court found that she cannot raise the issue on appeal when she failed to object at trial and when she objected to a continuance that would have allowed her to review the content of the social worker's representation to the court. (JC)

#### **FAMILY LAW ORDERS; GUARDIANSHIP: WIC 362.4, 366.4**

*In Re Kenneth S., Jr.* – filed Dec. 12, 2008, ordered published Jan. 7, 2009, Fourth Dist., Div. One.

Docket No. D053130

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D053130.DOC>

Two children were detained due to domestic violence, and were placed with an uncle. The juvenile court ordered a permanent plan of guardianship with the uncle, gave father monitored visitation, and terminated jurisdiction. A year later, father filed a WIC 388 petition seeking to modify the visitation orders. The court found that father had made a prima facie case, and set a hearing. After several continuances, a different judge denied the WIC 388 petition on the grounds that the family court was the proper forum to modify the visitation orders. Father appealed.

Reversed. After termination of dependency jurisdiction, the family court has jurisdiction over custody and visitation issues between the two parents, under WIC 362.4, but the juvenile court retains jurisdiction over issues arising from dependency guardianships, under WIC 366.4. Since the juvenile court found that father had made a prima facie case as required by WIC 388, it was required to hold a hearing. (MM)

#### **REMOVAL; WIC 361(c)**

*In re H.E.* --filed Dec. 23, 2008, First Dist., Div. Two

Docket No. A120903

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A120903.DOC>

Mother and father were engaged in a bitter custody dispute regarding H.E., age 3, and S.E., age 1, resulting in a dependency petition as to both children alleging failure to protect (section 300, subdivision (b)) and serious emotional damage (subdivision (c)). The children were placed in foster care. The jurisdiction report indicated that H.E. was exhibiting extreme aggressive behavior. During her supervised visits with the children, mother refused to comply with the court order that she not refer to the case in the children's presence. Additionally, she exhibited bizarre and inappropriate behavior; during one supervised visit, the social worker had to shelter the children in a bathroom while a 911 call was made. Meanwhile, visits with

the father went well, and H.E. “‘was like a whole different child with her father,’ playing, laughing, and saying please and thank you.” At disposition, the court declared dependency, adopted case plans for reunification for each parent, required each to undergo a psychological evaluation and retained the children in foster care, making removal findings of danger-from-return and reasonable efforts. Mother appealed the disposition on the grounds, among others, that pursuant to *In re Isayah C.* (2004) 118 Cal.App.4<sup>th</sup> 684, there has to be a risk of “physical harm” as opposed to “emotional” harm in order to support a removal order under WIC 361(c)(1).

Affirmed. As to H.E., the record contained substantial evidence to support the trial court’s finding that H.E. was suffering severe emotional damage within the meaning of WIC 361(c)(3). As to S.E., removal was justified on the grounds that S.E. was at risk of suffering emotional harm. The language of 361(c)(1) is ambiguous. The first clause allows removal where “there is substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor was returned home,” and the second clause requires “there [be] no reasonable means by which the minor’s physical health can be protected without removing the minor for the minor’s parents’ or guardians’ physical custody . . . .” However, the legislative history of the above provision supports a construction that allows removal for substantial risk of emotional harm alone. *Isayah C.* was not a case involving an allegation of risk of emotional harm, and therefore any purported holding in that case relating to this issue constituted dicta. (PB)

### **REUNIFICATION SERVICES – DENIAL; WIC 361.5(b)(6)**

*Jose O. v. Superior Court* – filed Dec. 3, 2008, ordered published Dec. 23, 2008, Fourth Dist., Div. One.

Docket No. D053669

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D053669.DOC>

Three-year old was detained after he saw father kill mother with a knife. Juvenile court denied reunification services under WIC 361.5(b)(6). Father filed writ petition. Writ denied. The words “infliction of severe physical harm” in WIC 361.5(b)(6) encompass acts that physically harm a child by causing serious emotional damage. Physical injury of the child is not required. Although the juvenile court did not explicitly find that reunification services would not be in the child’s best interest, that finding can be implied because it is supported by substantial evidence. Denial of reunification services was not an abuse of discretion. (MM).

### **REUNIFICATION TIME FRAME UNDER WIC 361.5**

*In re A.C.* - filed December 22, 2008, Fourth Dist., Div. 3

Docket No. G040540

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/G040540.DOC>

Juvenile court detained children from mother and released them to father. Subsequently, agency filed a WIC 387 petition and detained children from father. The court conducted a jurisdiction/disposition hearing on the 387 petition, offered reunification services to the parents upon agreement by all parties, and set a six-month review hearing. At the six-month review, the court found a substantial probability that the children would be returned to their parents by the 12-month review hearing and continued reunification services. The children objected, requesting that the court set a WIC 366.26 hearing because the parents had received services beyond those authorized by WIC 361.5(a) including services during the time when the children were placed with their father. The court declined. Children appealed.

Affirmed. The time limits for services set forth in WIC 361.5 do not apply if the children are not removed from the custody of both parents at the dispositional hearing, even when a child is removed from a custodial parent and placed with a non custodial parent. Here, WIC 361.5 did not become relevant until the WIC 387 petition resulted in the removal of the children from the custody of both parents. Also, when the children were initially removed from mother's custody, the father received *family maintenance* services and the court provided an *enhancement plan* to the mother instead of reunification services. As such, the expectation of a timeline for mother to complete services or face termination of parental rights under court advisement, pursuant to WIC 361.5, was not in place. Thus, at the six month review, the court was required to address whether there was a substantial probability the children may be returned to either parent by the 12-month hearing. Here, substantial evidence supports the order to continue reunification services. The mother completed a parenting course and a child abuse program, had no positive drug tests, nearly completed her 52-week domestic violence program, and took advantage of her unsupervised visit opportunities. Furthermore, the agency recommended continuation of services until the 12-month review hearing. (SA)

## **UCCJEA; TEMPORARY EMERGENCY JURISDICTION AND SUBJECT MATTER JURISDICTION**

*In re Jaheim B.*- filed December 22, 2008, published January 1, 2009 Fourth Dist. Div. 3  
Docket No. D053121

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D053121.DOC>

County agency detained child after mother abandoned him in parking lot. The child was born in and lived in Florida for the first two years of his life and lived in California with his mother for five months prior to detention. Father was incarcerated in Alabama until 2028. At the jurisdiction/disposition hearing, the court sustained the petition, removed custody from the parents, and offered reunification services to the mother but not the father. The father appealed, claiming that the court did not have temporary emergency jurisdiction and Florida had subject matter jurisdiction because Florida was the child's home state.

Affirmed. Because the child did not have a home state under Family Code sections 3402(g) and 3421(a)(1) as he did not live with a parent in California or Florida for at least six consecutive months immediately before the dependency petition was filed, a California court could not assume jurisdiction to make an initial child custody determination under Family

Code 3421. However, even without home state jurisdiction, the juvenile court had emergency jurisdiction under Family Code 3424(a) because the child was present in California when the neglect occurred and the court's action was necessary to protect him from immediate harm. Family Code 3424 states that a court may exercise temporary emergency jurisdiction when a child is present in this state and it is necessary in an emergency to protect the child because the child is subjected to or threatened with mistreatment or abuse. Further, because the risk of harm creating the emergency was ongoing and the child could not immediately be returned to mother, the court had subject matter jurisdiction under Family Code 3424 to conduct the dependency proceeding and issue jurisdiction and disposition orders. The mother remained homeless, did not have stable employment, admitted she could not care for her child, admitted to suicidal thoughts and had not received mental health services, and did not intend to participate in reunification services. Finally, once the court detained the child, declared him a dependent, and removed him from parental custody, its temporary emergency jurisdiction ripened into permanent jurisdiction and California became his home state. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under the UCCJEA, a child custody determination made under Family Code 3424(b) becomes a final determination and this state becomes the home state of the child. Here, the court in Florida was aware of the proceedings in California and informed the court here that there is no case there relating to the mother or child, and the mother did not have a history with child protective services in Florida. (SA)

### **NON-DEPENDENCY CASES OF INTEREST**

#### **PARENTAGE; *Kelsey S.***

***Adoption of O.M.*** – filed Dec. 22, 2008, First District, Division Four  
Docket No. A120844

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A120844.DOC>

Mother and B.R. had a relationship, but did not live together and were not married. In February 2006, B.R. learned that mother was pregnant. A week later, he was arrested and went to jail for the next four months. While in jail, he stayed in contact with mother by telephone, but did not give her financial support. When he was released in June 2006, she started avoiding him. He tried to contact her through her mother and friends, but did not try to give her money or other support. In July 2006 mother met a couple who wanted to adopt, and in July or August 2006, B.R. learned that mother was planning to give the baby up for adoption. He made an appointment with a lawyer, but then was arrested for possession of drugs for sale, and being a felon in possession of a firearm. B.R. was convicted and sentenced to 12 years in prison. In September 2006 O.M. was born. The prospective adoptive parents came to the hospital and mother relinquished O.M. to them. B.R.'s parents also came to the hospital. The same day, B.R. filed a paternity action, and asked that the court grant guardianship to his parents. The prospective adoptive parents filed an adoption petition, to which B.R. objected. In January 2008 the trial court ruled that B.R. did not qualify as a presumed or *Kelsey S.* father, and that adoption would be in O.M.'s best interest since he was attached to the prospective adoptive parents. B.R. appealed.

Affirmed. B.R. did not, as required by *Kelsey S.*, promptly attempt to fulfill his parental responsibilities as fully as mother would allow and his circumstances would permit. He did not try to give mother any financial or other support during her pregnancy. His incarceration is not an excuse for failing to fulfill the requirements of *Kelsey S.*, since it resulted from his own actions of possessing drugs and a gun. Moreover, he was not seeking to raise O.M. himself, but only to have his parents care for O.M. during his lengthy incarceration. This result does not conflict with prior dependency cases upholding the right of incarcerated parents to retain custody if they can arrange for their children's care during their incarceration, because those cases involved parents who already had a relationship with their children. (MM)

### **UNPUBLISHED CASES OF INTEREST**

#### **FAMILY REUNIFICATION SERVICES; WIC 388**

*In re E.C.* – Filed Dec. 23, 2008, Second Dist., Div. One  
Docket No. B207763

Four children were detained due to severe physical abuse of one child, C.A., by mother. Father of the other three children was denied family reunification services under WIC 361.5(b)(6) as to the youngest child, E.C., because he did not do anything to prevent the severe abuse of his step-daughter C.A. He was granted reunification services as to his older two children, A.C. and V.C., because he had a good relationship with them. Father filed a writ petition, which was denied on the basis that the court did not abuse its discretion in denying reunification services as to E.C. Father then filed a WIC 388 petition, stating that he had completed parenting classes, all his drug tests were negative, he had made good progress in therapy and domestic violence counseling, he visited consistently with E.C. and had unmonitored weekend visits with A.C. and V.C., and he had separated from mother. The court denied the WIC 388 petition. Father appealed.

Reversed. There was undisputed evidence of a substantial change in circumstances. Moreover, the juvenile court explicitly found that father was in full compliance with the case plan as to A.C. and V.C., and granted him an additional six months of reunification services as to them; there was no reason why they would be safe with father and E.C. would not. The fact that E.C. was bonded to his caregivers and not to father was not a valid basis to deny the WIC 388 petition, because father had never been given services so he never had a chance to bond with E.C. (MM)

#### **GUARDIANSHIP; WIC 360(a)**

*In re N.M.*--filed January 8, 2009, Second Dist., Div. Three  
Docket No. B208146

In 2003, mother left two year old A.M. with family friends, the G.'s, and the G.'s were granted temporary guardianship, in probate court. In April 2006, while incarcerated, mother gave birth to N.M. That same month, DCFS filed a section 300 petition regarding both A.M. and N.M. In May, 2006, DCFS filed an amended petition alleging, among other things, domestic violence and a long history of drug use by mother. The court found the children persons described by section 300, subdivision (g), and "in lieu of" adjudicating the children dependents of the court, set the matter for a guardianship proceeding pursuant to section 360, subdivision (a). On October 10, 2006, the court appointed the G.'s legal guardians and terminated jurisdiction. The court noted that mother and A.M.'s father had waived reunification services and N.M.'s father was an alleged father not entitled to reunification services (and also did not object to not receiving them). In October, 2007, one year later, DCFS filed a petition pursuant to section 388 requesting that the court reinstate jurisdiction and set a hearing pursuant to section 366.26 to allow the legal guardians to adopt the children. Mother filed her own section 388 petition to terminate the legal guardianship and order the children returned to her. The court eventually denied mother's 388 petition and terminated parental rights. Mother appealed.

Reversed. By its terms, section 366.26 applies to children who are adjudged dependents under 360(d). Because the children had never been declared dependents, the juvenile court did not have the authority to terminate parental rights under section 366.26. When a section 360(a) guardianship is "in lieu of" declaring the children dependents, the court can not thereafter terminate parental rights. (PB)

### **SEX OFFENDER PRESUMPTION; WIC 355.1(d)**

*In re D.L.* – filed Jan. 8, 2009, Second Dist., Division Two  
Docket No. B205263

School officials made an abuse report when they learned that a 15-year old student and her 22-year-old boyfriend were the parents of a child. The relationship began when mother was 13. Father was charged with statutory rape, mother was detained from maternal grandmother, and the baby was placed with mother in a foster home. Father was convicted and sentenced to 5 years probation, and had to register as a sex offender. At the jurisdictional hearing, the agency invoked the WIC 355.1(d) presumption, so father had the burden of showing that he was not a risk to the baby. The agency's investigator and father's expert both testified that father had poor judgment and lacked understanding of child development, but he admitted his mistake and wanted to marry mother and care for their child, and the baby would not be at risk of sexual or physical abuse from father. The court held father had failed to rebut the WIC 355.1(d) presumption, sustained the petition, and gave father monitored visitation. Father appealed.

Affirmed. Father presented sufficient evidence to rebut the presumption, because the undisputed evidence was that the baby would not be at risk of physical or sexual abuse from father. However, the error was harmless because there was sufficient evidence in the record, apart from father's conviction, to support the jurisdictional and dispositional orders. The

court's references during the hearing to information from speakers at conferences and from mother's dependency case were improper, but this error was also harmless. (MM).

## **OTHER LEGAL DEVELOPMENTS**

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

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

08-60            Publication of Citation In Foreign Language Newspaper

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0860PublicationForeignNewspaper.doc>

This FYI is to advise staff that effective immediately CSWs are not to request that notice by publication be done in a foreign language newspaper. Pursuant to Welfare and Institutions Code Section 8, "Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement, or record is required or authorized by this code, it shall be made in writing in the English language." The only exception to this is when the Court orders the Department to use a foreign language newspaper. (SA)

08-61            Exit Outcomes for Youth Aging Out of Foster Care

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0861ExitOutcomeAgingoutyouthtffostercare.doc>

This FYI is to advise staff that effective immediately DCFS is required to report to the State information regarding youth who age out of foster care. This requirement is a result of the Child Welfare System Improvement and Accountability Act to improve outcomes for children in California's child welfare system. The guide also sets forth procedures staff are to follow in collecting this information. (SA)

08-62            Seeking Authority For HIV Testing

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0862AuthorizationHIVTesting.doc>

This FYI is a reminder to DCFS staff on the policy and procedures for seeking authorization for HIV testing for a child. (Note: If a child is 11 years old or younger, authorization must be sought from the parent/guardian. If the parent or legal guardian is not available or refuses to provide authorization, authorization must be sought from the court.) (SA)

#### **Procedural Guide:**

0100-525.40    (REV) Team Decision Making: The Resources Management Process  
(RMP/TDM)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052540RMPv1208.doc>

This procedural guide was revised to indicate that the time frame for scheduling a RMP/TDM when a 7-day Notice/Intent to Discharge is given has been changed from 3 business days to 5. In addition, RMP/TDM is required when a child is being referred for Wraparound services. (SA)

0100-535.60 (REV) Youth Development: Transitioning to Independency

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010053560EmancipationV1208.doc>

This procedural guide provides CSWs guidelines to follow to ensure youth emancipate successfully. It was updated with information about Transition Conferences (formally called Emancipation Conferences) in which a Transition Action Plan is developed to assist the youth to identify short and long term goals and needs regarding education, occupation and personal goals, with the support and input of family, friends and the community. It was also updated to inform staff that DCFS is required to report to the State information regarding youth who age out of foster care. Thus, the policy sets forth procedures for staff to follow in collecting this information and documenting it on form DCFS 5204A "Exit Outcomes for Youth Aging Out of Foster Care." (SA)

0100-535.70 (REV) Pre-Exit Interview for Transitioning Youth

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010053570v1208.doc>

This procedural guide provides guidelines for CSWs to (1) comply with State mandated requirements for emancipating youth and (2) enable youth to emancipate successfully. It was updated with information on how to complete form DCFS 5204A "Exit Outcomes for Youth Aging Out of Foster Care" when recommending termination of jurisdiction for a child aging out of foster care. (SA)