



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

Vol. 5, No. 3 February 24, 2009

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

Written by: Martha Matthews (MM), Jenny Cheung (JC), Patricia Bell (PB) and Sophia Ali (SA)

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NEW DEPENDENCY CASE LAW

DENIAL OF REUNIFICATION SERVICES UNDER WIC 361.5(b)(13); ICWA

In re D.B.- filed February 18, 2009, Fifth Dist.

Docket No. A123439

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A123439.DOC>

In March 2007, the father violated the conditions of his parole twice by continuing his drug use and was ordered by the *parole authorities* to complete a residential treatment program. He completed the program in January 2008. In July 2008, he was arrested for possessing drugs and was again ordered by the *parole authorities* to complete a 90 day inpatient drug program upon his release from jail. Upon his release, father failed to report to the program and continued to use drugs. He was arrested again but began his treatment the following day. During this time his child was detained. At the dispositional hearing, the court denied the father reunification services under WIC 361.5(b)(13), finding that the father had an extensive history of substance abuse and his drug relapses in 2007 and 2008 amounted to resistance of court-ordered treatment because they violated the conditions of his parole. It also found that ICWA did not apply. Father appealed.

Petition granted for the limited purpose of ensuring compliance with ICWA but denied on the merits in all other respects. The reference of WIC 361.5(b)(13) to “court-ordered treatment” is not limited to a parent’s failure to comply with a *court*-ordered treatment program, such as a program ordered by a court as a condition of probation. It also includes treatment ordered by *parole authorities* as a condition of parole. While parole conditions are not ordered directly by the court, they are directly traceable to the court order imposing a prison sentence. Further, there is no meaningful distinction between treatment ordered as a condition of

probation and treatment ordered as a condition of parole because in both situations, a parent faces incarceration for violation of the condition and has ample incentive to comply. Also, construing the phrase “court-ordered treatment” to include treatment required as a condition of parole furthers the statutory purpose of WIC 361.5(b)(13) by allowing the court to identify parents, who, due to their history of substance abuse and resistance to treatment in the face of penal or other legal sanctions, are unlikely to benefit from reunification services. Regarding ICWA, the court erred by finding that ICWA did not apply solely because the child and father were not tribal members. A child may qualify as an Indian child within the meaning of ICWA even if the parent is not enrolled in the tribe as enrollment is not the only means of establishing membership. Further, although the BIA was unable to determine the child’s Indian status based on the information the agency provided to it prior to the dispositional hearing, father’s testimony at the hearing provided the court and the agency with additional information about his family so that the agency could send new ICWA notices with the updated information. (SA)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

09-02 Submission of the SS 8583, Child Abuse Investigation Report, to the Department of Justice

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0902InvestigativeReport.doc>

This FYI is to inform CSWs that according to Penal Code Section 11169(a), they are not supposed to forward a Child Abuse Investigation Report to the Department of Justice (DOJ) unless they have conducted an *active* investigation and determined that the report is not unfounded. If a CSW has not been able to locate the family and closes the referral as “Inconclusive,” s/he has not completed an “active investigation,” and *shall not* submit the Report to the DOJ. (SA)

09-07 Requesting Copies of Family Assessments/Home Studies From Foster Family/Adoption Agencies (Dually Licensed Agencies)

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0907Adoption.doc>

This FYI is to remind CSWs that adoption home studies are confidential and explains what may and may not be shared, with whom, and how. (SA)

09-08 (REV) Visitation Requirements

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0908VisitationRequirements.doc>

This FYI is an update to FYI 06-55 “Visitation Requirements: A Reminder to Staff” (11/07/06). It is to remind staff to ensure that planned and purposeful visitation occurs for children and families served by DCFS and to introduce the, “Family Visitation Planning

Checklist for Documentation in Case Plans and/or Court Reports.” This is a tool that has been developed as a guide to assist CSWs in documenting the required elements of visitation in court reports. (SA)

09-09 Overdue Child Support Referral Determinations/Re-Determinations

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2009/FYI0909CW51.doc>

This FYI is a reminder to CSWs to complete the overdue child support referral determinations or redeterminations. (SA)

Procedural Guide:

0050-504.25 (REV) Recording Child Deaths at the Child Protection Hotline (CPH) and Submission of the SOC 826, Child Fatality/Near Fatality County Statement of Findings and Information

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050425Fatalityornearfatalityv0209.doc>

This procedural guide was updated to notify CSWs that a Child Fatality referral should only be assigned to the Regions if there is suspicion of child abuse or neglect. (SA)

0090-503.10 (REV) Family Maintenance Services for Both Court and Voluntary Cases

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0090/009050310FMv0209.doc>

This procedural guide was updated to include amendments to WIC 301 which now states that CSWs cannot enter into a VFM or VFR agreement with a minor parent who is a dependent of the court until that minor parent has consulted with his/her attorney. (SA)

0100-510.40 (REV) Teen Parents In Foster Care

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051040TeenParentsv0209.doc>

This procedural guide was updated to reflect amendments to WIC 301 which now requires a dependent teen parent to consult with her/his court appointed attorney prior to entering into a VFM or VFR agreement. Also, in most cases, the term “father” has been replaced with “non-custodial parent” and gender bias language has been removed. (SA)

0100-520.40 (REV) Out-Of-Home Caregivers: Legal Consent Authority

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052040v0209.doc>

This procedural guide was revised to include changes to WIC 362.05 which now requires a group home administrator to apply the prudent parent standard in determining whether to give permission for a child to participate in extracurricular, enrichment, and social activities. (SA)

0100-570.10 (REV) The Care of Children Placed In Group Homes

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010057010v0209.doc>

This procedural guide was revised to include changes due to AB 2096, which mandates that group home administrators and facility managers or responsible designee shall apply the reasonable and prudent parent standard when determining whether to give permission for a child to participate in extracurricular, enrichment, and social activities. (SA)

0100-570.15 (REV) Quality-Of-Life In Out-Of-Home Care: Reporting Concerns

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010057005v0209.doc>

This procedural guide was revised to reflect the changes in WIC 362.05, which now allows a group home administrator, a facility manager or a responsible designee, and a caregiver to use a reasonable and prudent parent standard when determining whether to give permission for a child to participate in extracurricular, enrichment, and social activities. (SA)

0300-503.90 (REV) Submission of Last Minute Information For the Court

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050390v0209.doc>

This procedural guide was revised to reflect the proper procedure for submitting DCFS 4216 “Last Minute Information for the Court” for a matter that is being heard the same day. (SA)

0300-506.08 (REV) Communications With A Child’s Attorney

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050608v0209.doc>

This procedural guide was revised to reflect that subdivision (c) has been added to WIC 301. This change in law now states that a CSW cannot enter into a VFM or VFR agreement with a minor parent who is a dependent of the court until that minor parent has consulted with his or her attorney. In addition, this Procedural Guide has been updated to add instructions for CSWs regarding speaking with a child’s delinquency attorney. (SA)

1200-500.00 (REV) Nondiscrimination Regarding Clients, Out-Of-Home Caregivers and Adoptive Parents Concerning Placement Decisions

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/12005000v0209.doc>

This procedural guide was revised with updated information on evaluating and placing

children in a relative's home, licensed foster family home, small family home, foster family agency, or group home, keeping in mind that child welfare agencies are prohibited from considering the race, color, or national origin of a child or the foster / adoptive parent as a factor in making placement decisions.. (SA)

1200-500.05 (REV) The Indian Child Welfare Act (ICWA)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050005ICWAv0209.doc>

This procedural guide was updated to inform CSWs that form ICWA-030 can be automatically generated in CWS/CMS from the Notices Page in the Hearing Notebook. It was also updated to inform CSWs that when an Indian child is transitioned out, he/she is to receive written information concerning the child's dependency case, including any known information regarding the child's Indian heritage. (SA)