



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

JURISDICTION; WIC 300(b)

In re R.M. & S.M. – filed May 5, 2009, Second Dist., Div. One

Docket No. B210077

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B210077.DOC>

County agency filed petition under WIC 300(b) alleging that 13-year-old boy R.M. and 10-year-old girl S.M. were at risk of harm due to parents' inability to supervise or protect them. At jurisdictional hearing, agency presented evidence that R.M. saw adult films on parents' television, dressed in women's clothing, and engaged in inappropriate sexual conduct with his sister. Court found that parents' "divergent approaches to parenting" resulted in children's inappropriate sexual conduct, and that mother's physical and emotional problems made her unable to adequately supervise the children. Mother appealed. Reversed. The evidence did not support the conclusion that mother failed to supervise the children. As soon as she knew about the sexual conduct, she intervened, and there is no evidence that she should have known about it sooner. There was also no evidence that the sexual conduct was caused by "divergent approaches to parenting" or mother's physical disability or emotional problems. Although evidence of past events may have some probative value, to sustain a WIC 300(b) petition the circumstances at the time of the jurisdictional hearing must make it likely that the children will suffer serious physical harm or illness in the future. (MM)

REUNIFICATION TIMEFRAME; APPELLATE REVIEW

In re L.B. – filed April 28, 2009, Second Dist., Div. Five

Docket No. B210574

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B210574.DOC>

Father appealed from the jurisdictional and dispositional orders arguing that the juvenile court erred in finding that the allotted time for the parents to receive reunification services commenced to run at the detention hearing, rather than when the children were placed in foster care. A referral was made when mother was evicted from a residential substance abuse program and left with her two children. The children's whereabouts were unknown and neither parent appeared for the detention hearing. At a subsequent hearing, the children were still not located and the court ordered the department to provide reunification services to the parents and set the six-month review hearing for May 7, 2008. On May 7, the parents made their first appearance and the court made detention findings. At a continued hearing, the court sustained an amended petition, ordered family reunification services, and set the next hearing as a 12-month review hearing. The court reasoned that the time frame for ordering reunification services ran from the time the court found a prima facie case at the detention hearing held in November 2007.

Appeal dismissed. The appellate court found that the issue raised by the father was not ripe for appellate review. While the juvenile court stated on the record its intention to treat the calendared hearing as a "12-month review" as opposed to a "six-month review" hearing, the father was not yet aggrieved by the order. The appellate court stated that the juvenile court did not order fewer or different reunification as a consequence of its conclusion that the hearing would proceed under 366.21(f) rather than 366.21(e) and it had not yet committed the error which father raises. However, if and when the juvenile court denies father reunification services to which he would be entitled if the court applied the proper statutory provision, he will be aggrieved, and may appeal that order. (JC)

WIC 241.1

D.M. v. Superior Court – filed April 13, 2009, published May 8, 2009, Fourth Dist., Div. One

Docket No: G041370

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/G041370.DOC>

C.M. was declared a dependent at age five, after suffering years of abuse by her birth mother. After two prospective adoptions failed, C.M. was adopted by the parents in this case, who had previously adopted C.M.'s half-siblings. C.M. had behavioral problems in the home, which culminated in 2008. One day, when C.M. was grounded for poor behavior, she was left alone while the rest of the family attended a birthday party. Later claiming she only intended to cause the two family dogs to have diarrhea for the mother to clean up, C.M. fed the dogs her adult sister's medication, and the dogs died. The parents called the police, who arrested C.M. for animal cruelty. C.M. spent two months in juvenile hall awaiting a delinquency hearing. Ultimately, the delinquency court sustained the animal cruelty allegations. Based on a sympathetic report by a psychologist, probation recommended informal probation (WIC 725)

rather than wardship. The delinquency court ordered informal probation, and released C.M. to a group home. The county social services agency immediately filed a petition under WIC 300(b) and (g). The parents declined reunification services, and apparently intended to pursue reversal of the adoption. Based on the possibility that the court could declare C.M. a ward of the court if she failed to follow the terms of her informal probation, the juvenile court granted the parents' request for a joint report pursuant to WIC 241.1 concerning whether dependency or wardship status would be more appropriate for C.M. After conferring with probation, the social worker filed a report reflecting their joint conclusion that dependency status was more appropriate for C.M. The juvenile court rejected the parents' objections to the report, and sustained dependency jurisdiction. The parents filed a petition for writ of mandate/prohibition, seeking to compel the juvenile court to declare C.M. a ward, thus sparing them the "stigma" of dependency proceedings.

Writ denied. Parents' claim that the section 241.1 report was inadequate fails for two reasons. First, a section 241.1 report is required when it appears that a minor may fit the criteria of both a dependent child and a delinquent ward. C.M. was not a ward when the juvenile court assumed jurisdiction over her as a dependent child, so a section 241.1 report was not required, and would not be required unless and until C.M. violated the terms of her probation. Second, even if a report was required, the report was sufficient under section 241.1. Parents complained that the report was written by the social worker, whereas the statute requires a "joint assessment" by probation and the social worker. However, as both probation and social services concurred that dependency status was appropriate, there was no need to submit separate recommendations. Finally, the parents' assertion that the juvenile court should have ordered the probation department to consider filing a new wardship petition under WIC 601 is without merit. It rests within the discretion of the executive branch employees—social workers, probation officers and the district attorneys—whether to file such petitions, not the juvenile court. (PB)

WIC 388 AND ABUSE OF DISCRETION; BONDING STUDY

In re S.R. – filed May 1, 2009, Third Dist.

Docket No. C060404

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C060404.DOC>

Parents appealed from the juvenile court's order terminating parental rights and granting a petition for modification to vacate an order for a bonding study. After reunification services were terminated for the parents, they asked the court to order a bonding study and the agency agreed. The juvenile court ordered a bonding study to be conducted by a Spanish-speaking psychologist. About one month after the court's order, the agency filed a petition for modification seeking to vacate the order because no Spanish-speaking psychologist could be found. While the juvenile court initially noted the agency did not fully comply with the court orders to find a qualified person for the bonding study, it eventually found the order "futile" because it could not hold the agency to follow a court order that could not be accomplished when there was no Spanish-speaking professional available. At the subsequent 366.26 hearing, the juvenile court gave the children's counsel "a fair amount of leeway" to present

evidence of the children's attachment to their parents, heard the parents' testimony about visitation with the children, and terminated parental rights.

Reversed. The appellate court found that the juvenile court abused its discretion in granting the petition for modification to vacate the order for a bonding study. The appellate court stated that not every change in circumstance can justify modification of a prior order and the change in circumstance must relate to the purpose of the order and be such that the modification of the prior order is appropriate. In this case, the parties and court agreed to a bonding study and the evidence presented by the agency that a Spanish-speaking psychologist could not be found did not support a finding of changed circumstances, but rather a finding that a further continuance was required until the agency located a satisfactory expert. In addition, any modification must promote the children's interests and the expert evidence of a bonding study on whether the children would benefit from a continuing relationship with their parents goes directly to this interest. The appellate court stated that while a bonding study is not statutorily mandated, once it is ordered, the juvenile court is without discretion to modify or vacate the order without substantial evidence the bonding study is no longer necessary. (JC)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0070-516.15 Screening and Assessing Children for Mental Health Services and Referral to the Coordinated Services Action Team (CSAT)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007051615V0409.doc>

This procedural guide was passed as a result of the Katie A. lawsuit and requires Los Angeles County, as part of the lawsuit settlement agreement, to make systemic improvements to effectively serve foster youth with mental health needs. These improvements include expanding the Medical Hubs, TDMs and Wraparound, standardized mental health screenings, and also includes increases in the County's capacity to provide intensive in-home mental health services. These improvements will aid in the integration of important screening, assessment, and planning processes such as SDM, Hub Screening, Multidisciplinary Assessment Team (MAT) assessment and Team Decision Making (TDM) into one integrated assessment, planning, and service delivery process. Further an Advisory Panel was established to assist the County in developing plans for meeting the obligations of the settlement agreement and to report to the Court on the County's progress in doing so. (SA)

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/0100/010052540RMPv0409.doc>

This procedural guide was revised to clarify the role of the Department of Mental Health's Clinician in completing the Resource Management Process (RMP) Exit/Summary Report. (The RMP is a type of TDM that is a family centered, multi-departmental, integrated approach to identifying, coordinating and linking appropriate resources/services to meet the needs of children currently in or at risk of an RCL 6 through 14 placement.) (SA)

0300-303.15 (REV) Writing The Detention Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030315v0509.doc>

This procedural guide was updated with instruction regarding the documentation of parental consent for mental health and/or developmental assessment and services as well as authorization for disclosure of a child's protected health information. (SA)

0300-506.05 (REV) Conversations with Attorneys and Other Non-DCFS Individuals

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050605v0509.doc>

This procedural guide was revised a second time to inform CSWs that when verifying whether an attorney for the Alliance For Children's Rights represents a child in order to provide that attorney with confidential information about the child, an e-mail can be used as written verification. (SA)

0600-500.05 (REV) Multi Disciplinary Assessment Team (MAT)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050005MATv0409.doc>

This procedural guide was revised to reflect the cancellation of form DCFS 180A "Authorization to Release and Exchange Client Information and Records for Multidisciplinary Assessment Team Program" and the addition of forms 179-MH "Parental Consent for Child's Mental Health/Developmental Assessment and Participation in Mental Health Developmental Services" and DCFS 179-PHI "Authorization for Disclosure of Child's Protected Health Information." (SA)

0600-500.20 (REV) Protected Health And Medical Information: Access and Sharing

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050005MATv0409.doc>

This procedural guide was updated with additional instructions for staff to obtain mental health information. (SA)

0600-501.09 (REV) Consent for Mental Health and/or Developmental Assessment and Services

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050109v0409.doc>

This procedural guide was updated as a result of the Katie A. lawsuit to ensure timely mental health and/or developmental assessment and treatment of youth served by DCFS. (SA)

0600-508.00 (REV) Foster Youth Substance Abuse Services

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050800v0509.doc>

This procedural guide was revised a second time to update the contact information for Adolescent Intervention, Treatment, Recovery, and Prevention (AITRP) Providers. (SA)