



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

Vol. 6, No. 10 June 10, 2010

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)

© 2010 by Children's Law Center of Los Angeles (“CLC”). All rights reserved. No part of this newsletter, except those which constitute public records, may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing from CLC. Cases reported may not be final. Case history should be checked before relying on a case. Cases and other material reported are intended for educational purposes only and should not be considered legal advice.

For more information on Children's Law Center, please visit our website at www.clcla.org.

NEW DEPENDENCY CASE LAW

JURISDICTION; WIC 300(j)

In re Maria R. - filed May 27, 2010, Fourth Dist., Div. One

Docket No: D056110

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/D056110.PDF>

Father was found to have sexually abused his fourteen and twelve year old daughters within the meaning of WIC 300, subdivision (d), and his ten year old daughter and eight year old son were found to be at substantial risk of sexual abuse within the meaning of WIC 300, subdivision (j). All four children were removed from the parents' custody pursuant to WIC 361, subdivision (c). Father appealed on the grounds that substantial evidence did not support the finding that the abuse occurred, and that even if it did occur, there was no evidence to find that his youngest two children were at risk of sexual abuse. Mother appealed on the grounds that there was no evidence to support that she knew or had reason to know that father was sexually abusing his daughters, and the court should therefore reverse the jurisdictional finding under section 300, subdivision (d) as it applied to her.

Affirmed in part, reversed in part. Substantial evidence supported the court's jurisdictional finding that the abuse occurred, and that mother failed to protect her daughters from the abuse. The trial court could reasonably have concluded that father's history of sexually abusing his two older daughters placed their female sibling at risk of sexual abuse. However, substantial evidence did not support the finding that male sibling was at risk of *sexual* abuse. In proceedings alleging that a child is at risk of sexual abuse under section 300, courts must adhere to the statutory definition of the phrase “sexual abuse” found in Penal Code § 11165.1, whether the allegation of sexual abuse is filed under subdivision (d) or under subdivision (j).

Penal Code section 11165.1 refers to specific sex acts committed by a perpetrator on a victim, and does not include in its enumerated offenses the collateral damage on a child that might result from the family's or child's reaction to a sexual assault on the child's sibling. In this case there was no evidence in the record which would support a finding that the male sibling was at substantial risk of sexual abuse. However, subdivision (j) does not state that its application is limited to the risk that the sibling will be abused or neglected as defined in the same subdivision that describes the abuse or neglect of the child. Rather, subdivision (j) directs the court to consider whether there is a substantial risk that the sibling will be harmed under subdivision (a), (b), (d), (e) or (i) of section 300, notwithstanding which of those subdivisions describes the child. In addition, under WIC 355.1(d)(3), the finding that father sexually abused his two daughters constitutes prima facie evidence that the male sibling is a child described by subdivisions (a), (b), (c) or (d), and is at substantial risk of abuse or neglect. (PB)

STAY PURSUANT TO SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

In re Amber M.- filed April 27, 2010 and pub. May 24, 2010, Fourth Dist., Div. One
Docket No. D055539

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D055539.DOC>

Children were detained because of domestic violence by mother but were released to mother pending jurisdiction. The court set a contested jurisdiction and disposition hearing for June 9, 2009. Prior to the hearing, father's counsel filed a request to stay the proceedings under the Service Members Civil Relief Act (SCRA) indicating that father, who was in the Navy, was going to be deployed to Iraq and would be unable to appear at any court dates. The request indicated that his year-long deployment would make it impossible for him to reunify during the statutory time, participate in court ordered services, request placement of the children with his parents, and request visitation consistent with his participation in his case plan. The application also included a letter from father's commanding officer confirming that he was currently under orders to deploy to Iraq with an estimated return date of February 2010. The court denied father's request for a stay, finding that the letter submitted by father's commanding officer did not demonstrate that his active military duty prevented his appearance at the court proceedings. At the contested jurisdiction and disposition hearing, the court ordered the children remain with mother under a voluntary service plan pursuant to WIC 360(b) and terminated jurisdiction. Father appealed.

Reversed. The juvenile court abused its discretion in denying the stay as the SCRA entitles a military servicemember a 90 day stay of court proceedings if the application shows that his/her current military duty requirements materially affect his/her ability to appear, states a date when the servicemember will be available to appear, and includes a letter from the commanding officer that verifies the member is unable to appear and that military leave is not authorized. As the SCRA must be liberally construed to prevent any disadvantage to the servicemember resulting from his/her military service, even if the letter from father's commanding officer did not specify that father was not authorized to take leave, it substantially complied with the act. The letter from his commanding officer indicated he was currently under orders to deploy to Iraq, could not attend the June 9, 2009 hearing, and was not expected to return until February 2010. The evidence presented by father's counsel, the

social worker, and mother at the June 9 hearing confirmed that father had already deployed to Iraq, would not be able to attend the hearing, and was only available by email. Further, the application for a stay itself confirmed father's unavailability to participate in the proceedings as it stated that his deployment rendered him unable to appear at any court dates, and would make it impossible for him to reunify during the statutory time and participate in court-ordered services. (SA)

WIC 387

In re A.O. – filed May 28, 2010, Second Dist., Div. One

Docket No. B218741

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B218741.DOC>

Father appealed from an order on a WIC 387 supplemental petition terminating a home of parent order and removing A.O. from his care after his arrest and incarceration and placing A.O. with father's wife. Prior to father's recent arrest, A.O. was removed from the parents' care because of physical abuse and failure to protect against sexual abuse by mother and because father was incarcerated. Father was eventually paroled from prison and the juvenile court ordered A.O. placed with father with family maintenance services. About 6 months later, father was arrested for burglary and violating parole and a supplemental petition under section 387 was filed alleging that the previous disposition for A.O. had not been effective for her protection. Father's wife told the social worker that she wanted to continue to care for A.O. in the same home in which they were living before father's arrest. The juvenile court sustained the supplemental petition, removed A.O. from father's custody, and ordered her suitably placed with her stepmother. The juvenile court rejected father's and A.O.'s request to dismiss the supplemental petition on the ground that father had made an appropriate plan for A.O. to reside with the stepmother.

Affirmed. The appellate court found that a basis to avoid the assertion of jurisdiction over a child under WIC 300, subdivision (g) – that the incarcerated parent made an appropriate arrangement for the care of the child by a relative or friend – was inapplicable to a supplemental petition under WIC 387. WIC 300, subdivision (g) deals with the initial imposition of dependency court jurisdiction over a child, which is not at issue on a §387 petition to terminate a home of parent order. The appellate court stated that the purpose of section 300 is to identify those children over whom the juvenile court may exercise its jurisdiction and adjudge dependents. When a supplemental petition is filed, there already exists a basis for juvenile court jurisdiction and unlike when an original petition is filed, a section 387 petition does not affect the jurisdiction of the court. In addition, the facts provide substantial evidence that the previous order placing A.O. with father was no longer effective for her protection because the juvenile court placed A.O. with father under DCFS' supervision, thus father did not have legal custody over A.O. and had no authority to make decisions regarding her placement. While the stepmother as a member of father's household, cared for A.O. with DCFS approval, the court had not previously ordered A.O. placed with her and had not granted father sole legal and physical custody over A.O. so as to afford him the authority to make plans for her care in the event that he was unable to care for her. Lastly,

the appellate court found that while the juvenile court made disposition findings consistent with section 361 that clear and convincing evidence established a substantial danger of physical harm, section 387 does not expressly require application of section 361, subdivision (c)(1). (JC)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

10-33 SOC 154 A, A Placement Agency- Foster Family Agency

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1033SOC154AFFAPlacementAgreement.rtf>

This FYI is to advise staff that effective immediately, they are to begin using the SOC 154 A, Placement Agency - Foster Family Agency Agreement. All County Letter 10-19, directs counties to use the SOC 154 A for all new placements with an FFA and for any placements into new homes within an FFA. Staff are not required to use the SOC 154A for existing FFA placements unless the child is placed into a new home within the FFA or moved to a new FFA. (SA)

10-34 Conducting School Interviews for the Purpose of Investigating a Child Abuse Referral

Link to FYI: <http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1034SchoolInterviewforER.rtf>

This FYI is to inform CSWs that because the 9th Circuit Court of Appeals decision in *Greene v. Camreta* impacts how CSWs interview children on school grounds, guidelines are being issued to ensure immediate compliance with the standards articulated in the *Greene* case. Based on the case, CSWs are limited to the following options to conduct a school interview with a child when investigating a child abuse referral:

- Exigent Circumstances: A CSW may interview a child at school without consent or a warrant if an emergency situation exists which justifies an exception to the warrant requirement of the U.S. Constitution
- Non Exigent Circumstances:
 - A CSW may conduct a brief interview of 30 minutes or less (**without** consent or a court order) **only** if law enforcement is **not present and/or actively investigating the referral**.
 - Consent: A CSW may conduct an interview of a child at school if the CSW has consent from a parent/guardian or from a child age 12 or older.
 - A Court Order: If a CSW does not have consent and exigent circumstances do not exist, a CSW must obtain a court order to interview a child at school.

Procedural Guides:

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/0050/005050425v0510.rtf>

This procedural guide was updated to reflect the creation of Critical Incident/Child Fatality Special Project Codes in CWS/CMS for the purpose of accurately capturing the Critical Incident Referrals and Fatality Referral data in order for the Critical Incident/Child Fatality Review Section to better track these referrals. (SA)

0070-548.10 (REV) Disposition of the Allegations and Closure of the Emergency Response Referral

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054810v0510V2.rtf>

This procedural guide clarified when a CLETS request shall be made during an ER investigation. (SA)

0070-559.10 (REV) Summary of Clearances

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007055910v0510.doc>

This procedural guide was updated to reflect that when investigating a child abuse referral, a CLETS clearance shall be requested on referrals alleging at least one of the following: domestic violence, physical abuse, sexual abuse, substance abuse, exploitation or severe neglect. For referrals alleging emotional abuse or general neglect, a CLETS can be initiated when the CSW deems it relevant and appropriate. (SA)

0070-561.10 (REV) Live-Scan & California Law Enforcement Telecommunications Systems (CLETS) Clearances

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007056110v0510.doc>

This procedural guide was revised to clarify that CSWs shall initiate a criminal background check on all child abuse referrals when at least one of the following is alleged: domestic violence, physical abuse, sexual abuse, substance abuse, exploitation or severe neglect. For referrals alleging emotional abuse or general neglect, a criminal background check can be initiated when the CSW deems it relevant and appropriate. (SA)

0100-520.10 (REV) Evaluating A Prospective Caregiver

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010052010v0510.doc>

This procedural guide was revised to clarify when a foster parent may be assessed as a Non-relative Extended Family Member (NREFM). (SA)

0200-511.10 (REV) Adoption Assistance Program (AAP): Reassessment Procedures

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020051110v0510.doc>

This procedural guide was updated to provide information on the effect of the 2009/2010 Budget Act. A provision of this bill terminates the age-related increase for initial Adoption Assistance Program (AAP) agreements executed on or after January 1, 2010. Instructions were also added to the policy stating that if the reassessment form was not returned by the adoptive parents, AAP must continue at the same rate reflected on the last AAP agreement and Payment Instructions (AAP 2) form. Also, instructions to use the AAP 2 instead of the DCFS 280 were added. Further Adoption CSWs are now referred to as Adoption & Permanency Resources Division (APRD) CSWs. (SA)

0300-303.15 (REV) Writing the Detention Report

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030315v0510.doc>

This procedural guide was updated with instructions on how to write a Detention Report for a non-detained petition. In addition, it was updated to inform CSWs that they are to inform the court when the "Relative Notification Letter" was mailed to all appropriate relatives located. It was further updated to inform CSWs that they must request that the court grant DCFS authority to authorize medical procedures if the parents did not sign the DCFS 179. Finally, this procedural guide was updated to notify CSWS that ARA approval is now required in cases when parents reside in the same home and the child is detained from one parent only but remains with the non-offending parent because either the offending parent or non-offending parent has left the home. (SA)