



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

DENYING REUNIFICATION SERVICES TO CUSTODIAL PARENT WHEN CHILD IS HOME WITH OTHER CUSTODIAL PARENT

In re Pedro Z. – filed November 16, 2010, Second Dist., Div. One
Docket No. B223478

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B223478.PDF>

Seven year old Pedro lived with his parents and older sister. Father was arrested for a probation violation stemming from a probation sweep finding methamphetamine in the home. Pedro was detained from both parents. Father remained jailed on an immigration hold through the entirety of the case. At the disposition hearing, the court returned Pedro to his mother's custody and denied father services because Pedro was home with his mother; the court did not make any findings that father fell within any of the exceptions of WIC 361.5 to deny him services. Father appealed, arguing that the juvenile court was required under section 361.5 to provide him with reunification services because he was a custodial parent.

Affirmed. Section 361.5 is inapplicable when at the disposition hearing a child is returned to the custody of a parent. Instead, section 362(b) is the applicable statute. Section 362(b) requires that when a child is declared a dependent, but a parent retains custody of the child, the parent must participate in “child welfare services.” The services referred to are family maintenance services, not reunification services. Under WIC 16507(b), reunification to a parent “shall only be provided” when the child is in out-of-home care or with a previously non-custodial parent. (TBN)

REVERSAL OF TERMINATION OF PARENTAL RIGHTS REINSTATES BOTH PARENTS' RIGHTS

In re A.L. – filed October 20, 2010, ordered published November 17, 2010, Fourth Dist., Div. One

Docket No. D057412

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D057412.PDF>

Two children were detained from parents due to physical abuse. At the 18-month hearing, the juvenile court terminated family reunification services and set a WIC §366.26 hearing. Mother filed a WIC § 388 petition requesting return of the children, claiming that she had separated from father, completed therapy, and created a safety plan for the children. At the combined WIC § 388 and §366.26 hearing, father stated that he no longer wished to participate in the case; he was excused and his counsel was relieved. The court denied mother's §388 petition and terminated parental rights. Mother appealed, and the court of appeal reversed because the juvenile court had applied the wrong legal standard in considering her §388 petition. On remand, minors' counsel argued that the court of appeal's decision had reinstated father's parental rights (so the children could pursue military benefits and child support from father). The juvenile court ruled that father's parental rights had not been reinstated. The children appealed.

Reversed. Although father did not appeal the termination of his parental rights, this court's reversal of order denying mother's §388 petition necessarily vacated the orders made at the §366.26 hearing and put the parties back in the positions they were in before the §366.26 hearing. This result is in the children's best interests. Since mother's parental rights have been reinstated, there is no legitimate purpose to leave the children without a father and deprive them of whatever benefits they may be entitled to from the father and paternal relatives. (MM)

TERMINATION OF PARENTAL RIGHTS—WIC 366.26(c)(1)(B)(i) exception; ICWA

In re C.B.—filed November 18, 2010, Sixth Dist.

Docket No. B035085

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/H035085.DOC>

C.B. (10) and M.B. (9) were declared dependents based on a sustained petition alleging mother made an inappropriate plan for her children during a time when she was incarcerated, and had mental health issues impeding her parenting. The children had an older sister, C., who was not a subject of the petition. Father was serving a nineteen year prison term. The children were placed in foster care during reunification. After mother's reunification services were terminated, the children were placed in Bakersfield, with a maternal aunt and uncle who wanted to adopt. The court ordered supervised visits of two hours once a month in the county in which the children resided. The court also ordered the caregivers to make the children available once a week for telephone contact. At the scheduled section 366.26 hearing, mother's primary argument against terminating parental rights was based on the parent-child exception contained in section 366.26(c)(1)(B)(i). C.B., M.B., C., mother and maternal

grandmother all testified for mother. C.B. testified that he enjoyed his visits with his mother. He felt “okay” about being adopted by his aunt and uncle “so long as he could see [his] parents.” When asked how he would feel if he was adopted but was not able to talk regularly with his mother, he replied, “I wouldn’t like it.” M.B. testified she enjoyed her visits with her mother and would not like it if she could not see her mother anymore after being adopted. Maternal grandmother testified that since the children had moved to Bakersfield, she had rarely seen them. She recalled that at a recent visit at court, the children ran to mother and gave her big hugs and kisses. C. testified that she did not want the children adopted, and did not want her relationship with her brother and sister to end. Both mother and grandmother testified that they did not believe they would be permitted by the caretakers to maintain a relationship with the children if parental rights were terminated.

The court terminated mother’s parental rights, finding that the benefits of adoption outweighed the detrimental effects of terminating parental rights. In explaining its decision, the court appeared to rely heavily on the prospective adoptive parents’ willingness to allow the children to have continued contact with mother after the adoption. According to the court, this meant that “the children will have the best of both worlds. They will have stability, predictability, nurturing, love and warmth in their adoptive home; and because they are placed with relatives, they will maintain the connection to their parents.”

Mother appealed on the grounds, among others, that (1) the court improperly relied on the assumption that her contact with the children would continue after the adoption; and (2) the court failed to comply with ICWA. Specifically, the court failed to comply with California Rules of Court, rules 5.484(c) and 5.482. Rule 5.484(c) states that “active efforts” must include pursuit of any steps necessary to secure tribal membership for a child, if the child is eligible for membership in a given tribe. Rule 5.484(c) requires that if, after notice is provided, a tribe responds indicating that a child is eligible for membership if certain steps are followed, the court must proceed “as if” the child is an Indian child and direct the appropriate agency to prove active efforts under Rule 5.484(c) to secure tribal membership for the child.

Reversed and remanded. The juvenile court injected an improper factor into the weighing process, namely the prospective adoptive parents’ willingness to allow the children to have continued contact with the mother. The parent-child relationship enjoys no legal recognition after termination of parental rights. Therefore, the court cannot terminate parental rights based on an unenforceable expectation that the prospective adoptive parents will voluntarily permit future contact between the child and the biological parent, even if substantial evidence supports that expectation. With respect to the ICWA issue, the Rules 5.484(c) and 5.482(c) do not appear to be consistent with the controlling statute, which contains no requirement that the court proceed “as if” the child is an Indian child. In any event, at the section 366.26 hearing, the court *did* proceed as if the children were Indian children. Any argument that the court did not proceed “as if” the children were Indian children at earlier hearings was waived. (PB)

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

10-73 Referring Transitioning Youth For DPSS Services Pilot

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1073TransitionYouthDPSSPilot.rtf>

This FYI informs CSWs about the DPSS Services Pilot Program, which currently is only being implemented in the Compton and Santa Clarita Spas. Public Law 110-351 mandates that a 90-Day Transition Plan be completed for youth transitioning out of foster care and that the youth be informed about other County services. In addition, All County Letter No. 09-25 outlines procedures and instructions for applying for food stamps, which involves collaboration between DCFS and DPSS, and will enhance the likelihood that a youth will transition out of foster care with food stamps benefits. This process of assisting the youth with the food stamp application has been incorporated into the 90-day Transition Planning Conference as set forth by Procedural Guides 0100-535.70. Finally, this FYI advises staff that there are already protocols in the DCFS/DPSS Linkages Project which recommends utilization of the DCFS 5122. DCFS 5122 acts as a screening and referring tool for DCFS staff, to ensure that all youth transitioning from foster care receive information regarding DPSS sponsored programs. As such, this FYI specifies the duties of the ILP/Transition Coordinator regarding 5122. (SA)

10-77 New Name For The Food Stamp Program- CalFresh

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1073TransitionYouthDPSSPilot.rtf>

This FYI is to advise staff that with the passage of Assembly Bill (AB) 433 the California Department of Social Services (CDSS) was required to propose a new name for the Food Stamp Program (FSP) in California. Pursuant to All County Letter (ACL) 10-55, Implementation of the Renaming of the Food Stamp Program to CalFresh, the new name for the food stamp program is CalFresh. Further, according to the ACL, it is expected that as changes are made to forms, notices, etc., the new name will be incorporated. Counties should continue to use current stocks of forms, notices, etc on hand until they are depleted. (SA)

10-78 New Hague Notice Requirements

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1078NewHaugeNoticeReq.rtf>

This FYI is to inform staff about the new Hague Notice requirements. Per the Hague Convention Treaty, DCFS must comply with the Hague Convention when a parent resides outside of the United States, even when it is not court ordered for a parent to be noticed per the Hague Convention. The Hague Convention only applies when the county has an address.

Further, this FYI informs staff that notice under the Hague Service Treaty is required at the adjudication/disposition if the parent has not made a general appearance and at the WIC 366.26 hearing when the recommendation is to terminate parental rights and the parent has not made a general appearance. The Hague Convention treaty **does not apply** to service of notice of review hearings; however, if there is an address on file, CSWs are to notice by first class mail for review hearings. Finally, the FYI specifies the procedures for providing notice to a parent that lives in Mexico. (SA)

Procedural Guide:

0080-507.20 Concurrent Planning and the Concurrent Planning Assessment (CPA)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050720v1210.doc>

This procedural guide was revised to reflect recent legislation to recommend and consider Tribal Customary Adoption as a permanent plan for children who are or may be Indian children. (SA)

0200-515.05 (REV) Adoption of Children Under The Indian Child Welfare Act

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020051505ICWAv1110.doc>

This procedural guide was updated to reflect current information regarding provisions of the Indian Child Welfare Act and with information about Tribal Customary Adoptions. (SA)

0300-306.30 (REV) Notice By Publication of Citation

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030630V1210.rtf>

This procedural guide was revised as the result of the release of FYI 10-49, Changes to Notice by Publication of Citation in a Spanish Periodical. The FYI directs staff that, whenever the Court orders a legal publication for the termination of parental rights in a Spanish periodical, that in addition to the publication taking place in English in the *Los Angeles Bulletin*, along with *Nuestra Comunidad* through the Metropolitan News Company staff will request publication in the Spanish periodical *La Opinion* through the Daily Journal. (SA)

1300-500.05 (REV) The Indian Child Welfare Act (ICWA)

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/1200/120050005ICWAv1210.doc>

This procedural guide was updated to include information on Tribal Customary Adoption for dependent ICWA children. (SA)

C300-024 (REV) Notice By Publication of Citation

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20Clerical/c300/c300024v1210.doc>

This procedural guide was revised as the result of the release of FYI 10-49, Changes to Notice by Publication of Citation in a Spanish Periodical. The FYI directs staff that, whenever the Court orders a legal publication for the termination of parental rights in a Spanish periodical, that in addition to the publication taking place in English in the *Los Angeles Bulletin*, along with *Nuestra Comunidad* through the Metropolitan News Company staff will request publication in the Spanish periodical *La Opinion* through the Daily Journal. (SA)