



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

NOTICE; ALLEGED FATHER

In re Marcos G. – filed February 4, 2010, Second Dist., Div. Three

Docket No. B215969

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B215969.DOC>

Father appealed from the juvenile court's order denying his 388 petition and terminating his parental rights arguing he was not properly noticed of the hearings, was not provided with transportation to the hearings, and was not provided with notice of his right to be present to assert his paternity claim. Father was non-offending and incarcerated in a juvenile detention facility when Marcos was born but his whereabouts were unknown to the department at the time of the detention hearing and no attorney was appointed for him. By the time of the jurisdiction/disposition hearing, father was located and found to be incarcerated at a youth correctional facility in Stockton. Notice for the hearing was served on the father by certified or registered mail to the correctional facility. The notice advised father that he had the right to be present at the hearing, present evidence, be represented by an attorney, and that the hearing may proceed even if he is not there. Father was also served with a copy of the petition and advised who he could contact if he had questions. The PRC hearing was continued to March 21, 2007, and notice of that hearing was sent to the father and he was ordered back for the hearing. The statewide tracking sheet stated that the court's order for father's appearance was received and being returned because there was insufficient time to pick up father prior to the hearing date while the social worker's supplemental report stated that father had been transported “for the hearing” to a correctional facility in Chino. Father did not appear for the March 21 hearing and the juvenile court found him to be an alleged father and denied him reunification services pursuant to WIC 361.5, subdivision (a). Father

continued to be noticed of subsequent court hearings and never contacted the department or appeared at the hearings. He made his first appearance at the May 22, 2008 366.26 hearing and an attorney was appointed for him. Father signed a JV-505 form indicating that he believed he was Marcos' father, that he held Marcos out as his son, and that he provided support for him. At the next scheduled 366.26 hearing, father filed a 388 petition requesting that the trial court vacate orders from hearings dating back to the adjudication and disposition hearing and to take the 366.26 hearing off calendar. The 366.26 hearing was continued several more times and father waived his appearance for two of the court hearings. Father was subsequently paroled but did not contact the department. The April 16, 2009 hearing was continued so that father's counsel could verify his wishes about relinquishing his parental rights. Father appeared at the April 30 hearing, argument was taken on his 388 petition, and it was denied. The juvenile court also heard argument on the issue of adoption and terminated parental rights.

Affirmed. The appellate court found that the trial court's failure to provide father with notice of his right to change his status from alleged father to presumed father was harmless error. WIC 361.2, subdivision (b) and California Rules of Court, rule 5.635(a) provide an alleged father with the notice and procedural means to attempt to change his paternity status. While father was not provided with the JV-505 form prior to the May 22, 2008 section 366.26 hearing, the appellate court found that father was given repeated notice that his claim of parentage was at issue in proceedings that he failed to attend. In addition, the appellate court noted that father submitted his first JV-505 form to the trial court 11 months prior to the hearing at which his parental rights were terminated, thereby giving the trial court sufficient time to consider it. The appellate court also found that the trial court's non-compliance with Penal Code section 2625 in proceeding with the adjudication without the father's presence was harmless error. Efforts were made to bring father to the March 21, 2007 hearing and the appellate court found that father being transported to the hearing would not have changed the outcome of the jurisdiction/disposition hearing. Father was incarcerated and could not care for Marcos and father's relatives were not appropriate caretakers for the child. Lastly, the appellate court found that Marcos' best interest would not be served by setting aside the disposition order so that father's asserted presumed father status could be established and pursued where father's 388 petition was filed after Marcos had been living with his foster family and half-sister for over two years and where Marcos was bonded with them. The appellate court found no abuse of discretion with the trial court's decision to deny father's 388 petition. (JC)

PATERNITY

In re E.O. – filed February 5, 2010, First Dist., Div. Five
Docket No. A124534

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A124534.DOC>

Father appealed from the juvenile court's order denying his request to be declared a presumed father. The petition alleged that mother failed to protect E.O. from repeated sexual abuse by mother's boyfriend and named father as the alleged father of the girls. The social worker reported that father was the biological father of both girls but had no contact with either of

them until about four months ago. Father filed a notice of a judgment that had been entered six years earlier finding him to be the father of the girls and stating he had the obligation to pay child support. The social worker submitted a report stating that father had begun weekly visits with the girls but did not have any sort of father-daughter relationship with them and that neither girl wanted to live with him because they did not know him. Father also filed a declaration of parentage claiming he tried to visit with the girls over the years but mother prevented him from contacting them. He also admitted to learning E.O. was his daughter several years after she was born when he began dating mother again.

Affirmed. The appellate court found that a paternity judgment, in and of itself, does not confer on a biological father the status of a presumed father in dependency proceedings. In order to become a presumed father, a man must fall within one of the categories enumerated in Family code section 7611 and father could not establish under 7611(d) that he received the girls into his home or openly held them out as his natural children. A prior paternity judgment is not one of the ways set forth in Family Code section 7611 that a man can achieve presumed father status. (JC)

NON-DEPENDENCY CASES OF INTEREST

APPELLATE PROCEDURE

Brown Winfield & Conzoneri, Inc.,--filed February 1, 2010, Supreme Court
Docket No. S156598

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/S156598.PDF>

Upon receiving a petition for a writ of mandamus, prohibition or certiorari, a court of appeal has three options. It may summarily deny the petition; it may issue an alternative writ, in the nature of an order to show cause; or it may grant accelerated relief in the form of a preemptory writ in the first instance. If it takes the route of issuing a preemptory writ in the first instance, the court must first issue a “*Palma*” notice--notice the parties that the issuance of the preemptory writ in the first instance is being considered. (*Palma v. United States Industrial Fasteners* (1984) 36 Cal.3d 171.) A so-called “suggestive” *Palma* notice typically contains: 1) notice that the Court of Appeal intends to issue a preemptory writ in the first instance and grant the requested relief; 2) a discussion of the merits of the writ petition, with a suggestion that the trial court erred in the manner claimed by petitioner; 3) a specific grant to the trial court of the power and jurisdiction to change the disputed order, in which case the writ petition will be vacated as moot; and 4) a solicitation of opposition to the issuance of a preemptory writ, should the trial court elect not to follow the appellate court’s recommendation. Most often, upon receipt of a “suggestive” *Palma* notice, the trial court elects to change the disputed order.

Held, “suggestive” *Palma* notices are not improper. It is preferable for the court of appeal to grant the real party in interest an opportunity to file an opposition prior to such a *Palma* notice, but such an opportunity is not required. However, before reconsidering its interim ruling, the trial court must inform the parties that it is considering such action and give them an opportunity to be heard in the trial court. (PB)

OTHER LEGAL DEVELOPMENTS

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

Procedural Guides:

0050-502.30 (REV) Child Protection Hotline (CHP): Information Calls

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050230v0310.doc>

This procedural guide was revised to include instructions for CPH CSWs to provide the name and telephone number of the CSW to a relative of a child who calls the hotline because the relative believes the child may have been removed from the parent or guardian and the relative may be interested in caring for that child. (SA)

0050-503.40 (REV) Child Protection Hotline (CPH): Providing Feedback to Reporting Parties

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050340V0310.doc>

This procedural guide updated the CPH CSWs responsibilities at the conclusion of the reporting party's telephone call. (SA)

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/0050/005050425v0310.doc>

This procedural guide was revised to reflect that the CSW must complete form SOC 826 to submit to the state for each child fatality/near fatality determined to be a result of abuse and/or neglect. (SA)

0080-504.20 (REV) Case Plan Update

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050420v0310.doc>

This procedural guide was revised to reflect recent legislation (SB 118 and 597) which now requires that information about a parent's incarceration be included in the case plan and that the case plan address a child's educational stability while in foster care. (SA)

0080-505.20 (REV) Health and Education Passport (HEP)

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050520v0310.doc>

This procedural guide was updated to inform CSWS that for those DCFS offices that have put into practice the HEP-Court Report Implementation (see FYI 10-10), the HEP shall be attached to the court report, in lieu of a narrative, under the following court report headings for each child: medical, dental, education, developmental, and mental health status; CSWs are to refer the court to the HEP document under those headings. Additional pertinent information from observers (e.g. caregivers) who are not experts in the field of the information reported shall be included in the Current Family Circumstances portion of the court report. For those offices that **have not** put into practice the HEP- Court Report Implementation, the CSW must continue to provide a narrative under the following court report headings for each child: medical, dental, education, developmental, and mental health status and attach the HEP document to the court report. Finally, the procedural guide was updated to inform CSWs that they must remove the youth's Social Security Number prior to printing out the HEP and attaching it to the court report to prevent identity fraud. (SA)

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

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0080/008050720v0310.doc>

This procedural guide was updated with the instruction that all CPAs with a recommendation of Planned Permanent Living Arrangement (PPLA) shall be reviewed and initialed by the Adoption ARA who is the manager of the Adoption CSW who completed the CPA. The procedural guide was further updated to instruct the Adoption CSW, per recent state legislation, to provide information regarding the adoption tax credit for any individual who is adopting or considering adopting a child in foster care. (SA)

0100-510.50 (REV) Placing Children Six Years of Age or Younger in Congregate Care

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010051050v0310.doc>

This procedural guide was updated to reflect implementation of the "Screening and Assessing Children for Mental Health Services and Referral" to the Coordinated Services Action Team (CSAT) in some DCFS offices. In addition, other minor revisions have been made to ensure that prior to a congregate care placement, a RMP/TDM and consultation with co-located DMH staff takes place. (SA)

0300-306.30 (REV) Notice By Publication of Citation

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030630V0310.doc>

This procedural guide was revised to reflect that citations shall be published in a local newspaper of general circulation in English, and to further reflect that the Court may also order the CSW to issue the citation in a foreign language newspaper or specialized periodical. The procedural guide was also been revised to reflect changes in the publication vendor and publication request procedures. (SA)

0600-505.10 (REV) Assessment of and Services For Children With Special Health Care Needs

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050510V0310.doc>

This procedural guide was revised to reflect the name change from Medical Placement Unit (MPU) to Medical Case Management Services Unit (MCMS) and to reflect that the Concurrent Planning Redesign has been rolled out in all offices. Further, the procedural guide was updated with procedures related to the long-term care Medi-Cal application process; and to reflect current MCMS and transportation request procedures, required forms, and related policies. (SA)

0600-506.00 (REV) Promoting Children's Physical Well Being and Health

Link to procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050600v0310.doc>

This procedural guide was updated to reflect new definitions and links to relevant websites in the body of this procedural guide regarding children's health and weight issues. In addition, this procedural guide was updated with current procedures and now includes a reference to a new Special Projects Page Selection to track children with a BMI of 95% or greater. (SA)