



Children's Law Center of Los Angeles

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

APPELLATE PROCEDURE--STANDING

In re K.C.—filed April 26, 2010, Fifth Dist.

Docket No: F058395

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/F058395.DOC>

Infant K. was detained from parental custody due to mother's drug abuse, and both parents were denied reunification services. A hearing pursuant to WIC 366.26 was set. In the meantime, the grandparents requested placement of K., and the request was denied by the county agency. Grandparents filed a section 388 petition to request placement of K., and the petition was heard on the same day as the section 366.26 hearing. The juvenile court denied the grandparents' petition, and terminated parental rights. Father appealed.

Appeal dismissed. In this case, father lacked standing to appeal the denial of grandparents' section 388 petition. Although a parent has a fundamental interest in his child's companionship, care and custody until parental rights are terminated, in order to have standing, a parent must show that his rights “are injuriously affected” by the court's ruling. In this case, the most that father can show is that the court's decision had the “*potential*” to affect his interests, which is not sufficient to gain standing. Even if the juvenile court had granted the grandparents' petition, it could still have proceeded with its section 366.26 hearing, and terminated parental rights. (PB)

INEFFECTIVE ASSISTANCE OF COUNSEL; WAIVER

In re Jackson W. et al – filed April 29, 2010, Fourth Dist., Div. One

Docket No. D055622

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D055622.DOC>

Mother sought review of an order summarily denying her WIC 388 petition seeking a hearing on whether she received the effective assistance of counsel at an earlier stage of the proceedings. Children were removed from their parents for severe physical abuse. Two-month old Trenton had multiple injuries, including a fractured femur, several fractured ribs in various stages of healing, an injury to his mouth, and a bruise under his eye. The parents' explanation for the femur fracture was inconsistent with medical findings. The agency recommended that the court deny the parents reunification services under section 361.5(b)(5) based on the fact that mother had not protected the children, that she lacked protective skills, and because she refused to admit the father abused the children. Prior to the adjudication, mother informed the court she wanted to hire her own attorney, knowing that the attorney she chose was not a juvenile dependency law specialist, to replace the attorney appointed for her pursuant to WIC 317(b). The juvenile court advised the mother of her right to be represented by a certified specialist in juvenile dependency law and mother voluntarily waived that right. Mother told the social worker that she now believed the father accidentally injured Trenton and that she filed for divorce and was no longer living with him, while the social worker testified that the father had admitted to causing Trenton's femur and rib fractures and her observations of the parents led her to believe they intended to stay together. An Indian expert also testified that the children would suffer serious emotional damage if placed with mother. The trial court denied reunification services to the parents and set a section 366.26 hearing. The 366.26 report stated that the parents had been living together until the father was arrested for child abuse and that mother continued to support father and cancelled a visit with the children in order to attend his criminal hearing. Mother filed a section 388 petition seeking to have the court vacate its jurisdictional and dispositional findings and orders on the ground of ineffective assistance of counsel by retained counsel. The petition alleged numerous instances of counsel's failure to properly represent mother and that returning the children to mother and/or providing her with services would "further foster" the bond mother shared with her children. The trial court summarily denied petition finding it did not state new evidence or changed circumstances

Affirmed. The appellate court found that mother expressly waived her right to be represented by an attorney who had the training, skills and knowledge of a juvenile dependency specialist. Because mother knowingly, intelligently, and voluntarily chose to proceed with counsel who was not a specialist in juvenile dependency law, she cannot be heard to complain that counsel was not competently representing her precisely because he was not "child dependency qualified." The appellate court also found that even assuming mother's realization she had received ineffective assistance of counsel could be a change of circumstances or new evidence within the meaning of section 388, mother did not make a prima facie showing the proposed modification would be in the children's best interest. Mother persisted in her belief that Trenton's injuries were accidental, despite father's admission and an expert's opinion to the contrary and the children were not bonded to her.

Lastly, the appellate court stated that while a party may file a 388 petition to challenge an order because of ineffective assistance of counsel, the customary way to do so is by filing a petition for writ of habeas corpus in the juvenile court. (JC)

JURISDICTION

In re E.B. et al.—filed April 9, 2010, Second Dist., Div. One

Docket No: B215774

Link to Case: <http://www.courtinfo.ca.gov/opinions/documents/B215774.PDF>

Children were adjudicated dependents of the court due to mother's alcohol abuse, domestic violence and father's sexual abuse of daughter. The trial court adopted the county agency's case plan and ordered the children removed from father and placed with mother. Both mother and father appealed on the grounds that substantial evidence did not support the court's jurisdictional and dispositional findings. Mother argued that she was exclusively the victim of domestic violence and nothing she did or was likely to do endangered the children. Father argued that even if there was sufficient evidence to find by a preponderance that sexual abuse occurred, the evidence did not support the juvenile court's dispositional orders under a clear and convincing standard.

Affirmed. Domestic violence in the same household where the children are living constitutes a failure to protect the children from a substantial risk of encountering the violence and suffering severe physical harm or illness from it. As to father's appeal, the clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. The substantial evidence rule applies no matter what the standard of proof is at trial. (PB)

MOTION FOR RECONSIDERATION; NO CONTEST PLEA AT JURISDICTION

In re Andrew A.- filed March 30, 2010, published April 30, 2010 Fourth Dist., Div. One

Docket No. D055956

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D055956.DOC>

At the detention hearing, mother waived her rights and entered a no contest plea to the allegations in the petition with the understanding that her child would be returned to her care with family maintenance services. All parties stipulated to the waiver and conditions. The juvenile court accepted the no contest plea and made jurisdictional findings. Prior to the disposition on the WIC 300 petition, the agency filed a WIC 342 petition. At the jurisdictional hearing on the WIC 342 petition, the juvenile court dismissed the petition. Further, mother requested that the court revisit its jurisdictional findings on the original WIC 300 petition and dismiss the entire matter. The court treated mother's request as a motion for reconsideration based on new evidence and dismissed the WIC 300 petition after concluding that there was insufficient factual basis to sustain it. Minor and the county agency appealed.

Reversed. Because a party who enters a no contest plea admits all matters essential to the court's jurisdiction, that party may not later make a motion for reconsideration in which it asks the court to find that it lacks jurisdiction. Further, the agency did not submit a

jurisdictional report to support its allegations because it relied on the no contest plea. If it had the opportunity to develop additional facts, target its discussion specifically at establishing jurisdiction, and was able prepare a jurisdictional report, there is a reasonable probability that the juvenile court would not have believed it erred by accepting the plea and sustaining the petition. The juvenile court was also barred from reconsidering its jurisdictional findings on the WIC 300 petition because the parties were not provided with prior notice that the issue would be addressed at the jurisdiction hearing on the WIC 342 petition as required by WIC 386. Finally, although California Rules of Court, rule 5.696(a) allows a juvenile court to dismiss the petition on whatever valid grounds it finds to be appealable at a disposition hearing, the hearing here was a jurisdiction hearing on the WIC 342 petition, not a disposition hearing on the WIC 300 petition. (SA)

NOTICE; HAGUE CONVETION

In re Jennifer O. – filed March 30, 2010, Second Dist., Div. Three

Docket No. B216672

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B216672.DOC>

Children were detained from mother and stepfather due to physical and sexual abuse. Father lived in Mexico. Caseworker located father and spoke to him by telephone before jurisdictional hearing; he received notice of jurisdictional hearing and his counsel appeared at the hearing. Court ordered reunification services for father, but father did not follow up with Mexican children's services agency, contact the children by telephone, or stay in contact with county agency. County agency sent notices of six-month review hearing to father, and tried to call him. Court terminated father's reunification services. Father appealed.

Affirmed. County agency must comply with Hague Convention when serving parents in other countries with the petition and with notice of jurisdictional dispositional hearings. Once the court has acquired personal jurisdiction over the parent through proper notice and/or the parent's appearance in court, notice of subsequent hearings does not require formal service of process, and the Hague Convention does not apply. Sending notice of review hearing to father's last known address by first class mail was sufficient. (MM).

OTHER LEGAL DEVELOPMENTS

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

For Your Information (FYIs):

10-30 Entering Data into CWS/CMS Regarding the Investigation of a Referral

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2010/FYI1030CWSCMSContactDocumentationRequirements.rtf>

This FYI is to remind staff of the requirements of All County Information Notice I-86-06, Recording Time to Investigation Information in the Child Welfare Services/Case

Management System. These requirements are set forth in Procedural Guide 0400-503.05, Standards for Documenting Contacts (See Part D, page 6). (SA)

Procedural Guides:

0050-502.10 (REV) Child Protection Hotline (CPH): Basic Responsibilities

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050210V0510.doc>

This procedural guide was revised to direct CPH staff to use the DCFS Screener Narrative template. In addition, instructions were added regarding the creation of Safety Alerts. Finally, the procedural guide was revised to accurately reflect how CPH staff should document safety alerts.

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/0070/007054810v0510.rtf>

This procedural guide was updated to clarify instructions regarding conducting the emergency response investigation and the closure of the referral. In addition, the DCFS Investigation Narrative Template was revised. (SA)

0200-509.25 (REV) Presentation of Child Information to a Prospective Adoptive Family

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0200/020050925v0410.doc>

This procedural guide was revised to reflect that Concurrent Planning Redesign (CPR) has been implemented county-wide. (SA)

0300-301.06 (REV) Non Detained Petitions

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030030106nondetainedv0510.doc>

This procedural guide was updated to inform CSWs that IDC will now create non-detained petitions and was also updated with the responsibilities of CSWs, SCSWs, and IDC when filing non-detained petitions. (SA)

0300-503.94 (REV) Set-On / Walk-On Procedures

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0300/030050394V0410.doc>

This procedural guide was revised to reflect that CSWs are not required to submit an Ex Parte report along with the DCFS 1727 form when requesting to limit a parent's educational rights. (SA)

0600-501.10 (REV) Medical Consent

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0600/060050110v0410.doc>

This procedural guide was revised to clarify who is able to consent for the children's routine medical care and when. (SA)

0900-506.10 (REV) Clothing Allowances

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0900/090050610ClothingV0410v2.rtf>

This procedural guide was updated to inform CSWs of the proper use of gift cards as well as to indicate that a clothing allowance cannot be issued for a non-dependent infant on a Teen Parent case. (SA)

E050-0562 (REV) Adoption Assistance Program (AAP) Post Adoption

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E050/E0500562v0510.doc>

This procedural guide, which provides instruction guidelines for eligibility workers, was updated to reflect legislative and procedural changes regarding post adoption. (SA)

E090-0590 (REV) Foster Care Placement / Replacement

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20FCE/E090/E0900590v0510.doc>

This procedural guide was updated to inform CSWs that on all FFH placements, the TA's are to conform all existing children residing in the prospective home, including biological children, adopted children, children placed through legal guardianship or foster children and whether any of them are special needs children, prior to giving the CSW the listing of potential homes. (SA)