



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

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### **NEW DEPENDENCY CASE LAW**

#### **DE FACTO PARENTS; RIGHT TO CROSS-EXAMINE WITNESSES**

*In re Damion B. et al* – filed December 12, 2011, First Dist., Div. Two  
Docket No. A131039

Link to case: <<http://www.courtinfo.ca.gov/opinions/documents/A131039.DOC>>

De facto parents appealed the juvenile court's decision returning the children to their mother arguing it was prejudicial error in not allowing them to cross examine witnesses at the 18-month review hearing. Twins Damion and Dominick were declared dependents in August 2009 and placed with the G.'s in December 2009. One month after the 12-month review hearing, the G.'s were declared de facto parents. At the 18-month review hearing, the mother had completed her residential treatment program and the agency recommended the boys returned to her care. The de facto parents submitted a “Caregiver Information Form” opposing the agency's recommendation on the ground that mother had insufficient awareness of the boys' needs. They also told the social worker they were willing to adopt the children. At the 18-month review hearing, the court stated it was “uncertain ‘whether or not de facto parents even have standing to object’” to the agency's recommendation and asked the parties to brief the issue. The de facto parents requested an evidentiary hearing and to cross-examine the social worker. At the subsequent hearing, the court took considerable time to ascertain the nature of the de facto parents' position and what sort of proof they wanted to submit. The court stated that the de facto parents were afforded their rights under the Rule of Court in that they were present at the proceeding, they had counsel assigned to them, and presented evidence to the court by way of their detailed caretaker information forms. The court ruled that de facto parents were not entitled to cross-examine the social worker and returned the children to their mother's custody.

Affirmed. The appellate court first noted that in juvenile dependency proceedings, due process focuses on the right to notice and the right to be heard. The appellate court then found that the de facto parents were not shut out of the dependency proceeding in that they had appointed counsel, received notice of proceedings, and presented the trial court with their opinion as to the children's placement. The appellate court distinguished *In re Matthew P.* as cited in the de facto parents' trial brief and stated the de facto parents in that case were completely precluded from submitting their opinion to the court. The appellate court stated that despite the trial court's persistent inquiries in this case, the de facto parents never really made a concrete offer of proof that explained what actual evidence they wanted to present from live testimony. (JCM)

### **WIC §300(j)**

*In re Ashley B.* – pub. Jan. 12, 2012; Second Dist.

Docket No. B232428

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/B232428.DOC>

Mother appealed the juvenile court's order adjudging her daughter, Ashley, a dependent of the court pursuant to § 300(j). Jose, the youngest sibling of Ashley, was born prematurely in August 2010. He was discharged in September 2010. The parents were given instructions for Jose to sleep on his back in a crib. In November 2010, Jose was fussy and crying. Father stayed up to tend to Jose, fed him and, because Jose would not stop crying, father placed Jose on his side on a pillow in the parents' bed. At 4 a.m., father awoke and found Jose was not breathing, and that sibling Ashley was lying across the bed with her arm on Jose's head. Father attempted CPR and called 911. Jose was pronounced dead, and the manner of death was undetermined. There was no evidence of trauma and accidental asphyxiation could not be proven or ruled out. Investigation revealed that Jose's portable was broken, contained numerous blankets and had a tray across the top which was used for storage. The court sustained an A count related to physical discipline of Jose's siblings, a B count related to mother and father's domestic violence and a J count arising out of Jose's death. J count relating to the death of Jose. Mother appealed the court's finding as to the J count only, claiming there must be a sustained corresponding count as to Jose (who is not a subject of the petition) under one of the other § 300 subdivisions as a predicate to sustaining a count under § 300(j).

Affirmed. The appellate court found that the juvenile court did not err in sustaining the J count. While the court was not precluded from sustaining a count as to Jose under § 300(f), it was not required to do so as a prerequisite to its finding under § 300(j). Section 300(j) has two elements: (1) that the minor's sibling has been abused or neglected; and (2) that there is a substantial risk that the minor will be abused and neglected. Under § 300(j), the court is not obligated to sustain express findings as to the deceased sibling; the language of the statute permits an express or implied true finding as to the sibling. Given the circumstances of this case, the court made an implied finding that the deceased sibling was abused or neglected under one of the other subdivisions of § 300. (CA)

## **WIC 361.5(b)(10) and (11); REUNIFICATION BYPASS PROVISIONS**

*In re R.T.* –pub. January 11, 2012; Third Dist.

Docket No. C069345

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C069345.DOC>

Mother challenged the juvenile court's disposition order denying her reunification services for R.T. pursuant to WIC 361.5(b)(10) and (11). R.T. was detained, among other reasons, because of his parents' substance abuse issues. The petition alleged that the parents had previously failed to reunify with R.T.'s sibling because of the same issues. The petition further alleged that R.T. had also been the subject of a previous petition because of those issues; however, the parents had successfully reunified with him. At the disposition hearing, the juvenile court found that the parents had not made a reasonable effort to treat the problems that led to removal of R.T.'s sibling and denied the parents reunification services. Mother filed a writ petition.

Denied. The appellate court found that mother's effort to treat her chronic substance abuse problems did not constitute a reasonable effort such that the bypass provisions of WIC 361.5(b)(10) and (11) did not apply. WIC 361.5(b)(10) and (11) authorize the court to deny reunification services to a parent who failed to reunify with another child or whose parental rights to another child were terminated *if* the court finds that the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling. Here, mother's parental rights to the sibling were terminated because she only marginally participated in services and suffered multiple relapses. Mother resorted to using crack cocaine after the court terminated parental rights over the sibling. While she participated in a perinatal program after termination of parental rights, she failed to complete the program. Although she subsequently completed a drug program, she relapsed and this affected her ability to provide food and housing for R.T. and led to his first removal. While mother was able to successfully reunify with R.T., at the time of R.T.'s second removal, she had again resorted to using her limited resources to indulge in her drug habits instead of providing for R.T. This was the same situation that led to the sibling's removal and termination of parental rights. And in the month or two of services following R.T.'s second removal, mother only started to make efforts to address her substance abuse issues when the agency recommended that mother be denied reunification services. (SA)

## **NON-DEPENDENCY CASES OF INTEREST**

### **PATERNITY**

*E.C. v. J.V.* – filed January 19, 2012, Third Dist.

Docket No. C064745

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C064745.PDF>

In 2002 respondent was in a sexual relationship with Brian P. In the course of the relationship respondent became pregnant, though she ended her relationship with Brian soon thereafter. Respondent then became good friends with appellant; appellant took respondent to her doctor's appointments, was her Lamaze partner, and they often spent the night at each other's home. Appellant was with respondent during the birth of the minor; appellant even cut the umbilical cord. After minor was born, respondent and the minor lived with respondent's mother until the minor was three months old, when they moved into appellant's home. Sometime thereafter, appellant's and respondent's relationship became sexual, though they did not immediately inform their families. Appellant and respondent remained in a committed relationship for the next five years. Appellant joined the air force in 2005 and while she was away in the service, respondent and the minor moved in with appellant's mother. There was evidence that appellant held herself out as one of the minor's mothers. In 2008, appellant's and respondent's relationship ended, when the minor was nearly five years old. Appellant and respondent agreed that appellant would have visitation with the minor. Five months later, appellant filed a petition to establish a parental relationship with the minor. Respondent opposed the petition, on the grounds that appellant was the minor's godmother only, not a parent. The family court found in favor of respondent, finding that respondent had failed to prove she was a presumed parent. The trial court based its ruling on the fact that appellant and respondent did not make a conscious decision to have a child and were in fact only good friends when the child was born. The court also found that respondent never intended appellant to be a parent of the child.

Reversed. Under Family Code 7611(d), in order to be considered a presumed parent, a party must show both that she received the child into her home, and that she held the child out as her own child. It was indisputable that appellant received the child into her home. There are various factors to be considered in the determination whether a person has held a child out as her own; an alleged parent is not required to establish each and every one of these factors to obtain presumed parent status. In this case, the trial court considered factors that were irrelevant to the determination of presumed parent status, namely the relationship between the alleged parent and the biological parent, and whether outside parties were aware that appellant and respondent were having a sexual relationship. It was also not important whether appellant and respondent lived together continuously; what was important was the relationship between the alleged parent and the child. Also, respondent's testimony that she did not intend for appellant to be a parent was not dispositive. Respondent's intent would be relevant only if she manifested that intent through her conduct, thereby preventing appellant from holding the child out as her own. (PB)

## OTHER LEGAL DEVELOPMENTS

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

#### **For Your Information (FYIs):**

FYI 11-27        Completion of the BCIA 8583 as a Result of AB 717

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2011/FYI1127BCIA8583AB717.rtf>

This FYI is to advise staff on how to complete form BCIA 8583 “Child Abuse or Severe Neglect Indexing” due to the passage of AB 717 which requires that as of January 1, 2012, county welfare agencies only report substantiated, not inconclusive or unfounded, child abuse allegations to the DOJ. (SA)

FYI 12-01        Nonminor Dependent (NMD) and Extended Foster Care Templates and Special Project Codes are Now Available on CWS/CMS

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2012/FYI1201NMDTempltesandSpecialProjectCodes.rtf>

This FYI is to advise staff that templates and Special Project Codes related to nonminor dependents and extended foster care are now available on DCFS’s database . (SA)

FYI 12-02        Automatic Transmission of the Medical Hub Referral Form to Childrens Hospital Los Angeles

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2012/FYI1202AutoHubReferalFormChildrensHospital.rtf>

This FYI is to advise staff that on February 22, 2011, a new feature of electronically submitting the Medical Hub Referral Form to the Department of Health was implemented and that on September 26, 2011, DCFS implemented the Rightfax Feature to allow staff to automatically submit the Medical Hub Referral Form automatically to the Children’s Hospital Los Angeles. (SA)

#### **Procedural Guide:**