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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF XXXXXX
JUVENILE COURT

In re Matter of	)	Case No. XXXX
)	
	)	CHILDREN'S NOTICE OF MOTION
	)	AND MOTION FOR
(CHILD) et al.,	)	RECONSIDERATION PURSUANT TO
	)	WELF. & INST. CODE § 385;
Children.	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES; EXHIBITS
)	
	)	Date: February 14, 2007
	)	Time: 8:30 a.m.
	)	Dept.: XXXX

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on _____, 2007, at 8:30 a.m., in
Department XXXX of the above-entitled court, or as soon thereafter as may be heard, counsel
for the children will move the court to reconsider its order giving the Agency discretion to place
the children with Ms. XXXX XXXX pending ASFA approval and receipt of live-scan fingerprint
results, and instead order the Agency to temporarily place the children in home if the CLETS and
CACI results for all adults in the home are clean. Welfare and Institutions Code¹ section 309(d)
makes clear that a child may be temporarily placed in the "assessed" home or a relative or

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

1 nonrelative extended family member upon: 1) an in-home inspection to assess the safety of the
2 home and the prospective caregiver's ability to meet the child's needs, which has already
3 occurred in this case, and 2) receipt of clean CLETS and CACI results for all adults in the home.
4 ASFA approval and live-scan fingerprint results are not required for temporary placement.

5 This motion is based upon the notice of motion, the attached points and authorities, the
6 records and reports on file with the court in this matter, and upon any additional oral or
7 documentary evidence as may be presented at the time of the hearing.

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11 Dated: XXXX, 2007

Respectfully submitted,

12 Law Offices of XXXX

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14 _____
15 By: XXXX XXXX, Esq.
16 Attorney for the Children
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21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **STATEMENT OF FACTS**

23 On XXXX, 2007, the County social Services Agency ("Agency") detained the children
24 from their mother, who was alleged to have physically abused minor and to have engaged in
25 domestic violence with the children's father. The children were placed in foster care. (Petition
26 filed XXXX/07; XXXX/07 Det. Rpt.) The detention report said that the mother had given the
27 name, address, and telephone number of a "cousin," XXXX XXXX, for possible placement, but
28 the social worker had yet to contact XXXX. (XXXX/07 Det. Rpt., p. 9.) At the detention

1 hearing on XXXX, the court ordered an interim placement hearing on XXXX XXXX. (1/25/07
2 Minute Order.)

3 At the hearing held on XXXX, 2007, the Agency reported that CLETS and CACI checks
4 were pending on XXXX XXXX, whom the social worker now identified as a nonrelative
5 extended family member (hereafter “NREFM”), and her partner. The social worker had done an
6 in-home inspection which appeared favorable. (XXXX/07 PRI Rpt., pp. 3-5.) However, the
7 Agency did not recommend placement with XXXX XXXX because “ASFA approval and live
8 scan results are still needed.” (*Id.* at p. 5.) Counsel for the children asked the court to order the
9 children placed with XXXX XXXX as a clean CLETS, CACI, and an in-home inspection were
10 all that was required. County Counsel said they could not recommend placement before the
11 home was ASFA-approved. The court followed the recommendation and gave discretion to
12 place the children with XXXX XXXX once ASFA approval, live-scan results, and several other
13 conditions were met. (XXXX/07 Minute Order.)

14 **ARGUMENT**

15 **I. THE JUVENILE COURT MAY MODIFY OR SET ASIDE A PRIOR ORDER AT** 16 **ANY TIME UNDER WELF. & INST. CODE SECTION 385**

17 The juvenile court has both the inherent constitutional authority as well as the statutory
18 authority to reconsider a prior order at any time, either at the request of a party or sua sponte.
19 (*Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 110-118; § 385.) Section 385
20 provides:

21
22 Any order made by the court in the case of any person subject to its jurisdiction
23 may at any time be changed, modified, or set aside, as the judge deems meet and
proper, subject to such procedural requirements as are imposed by this article.

24 “Under this section, the juvenile court may modify an order that contains a clerical error, but
25 may also consider the substance of a previous order the court considers to have been erroneously,
26 inadvertently or improvidently granted.” (*Nickolas F., supra*, at p. 116.) Before exercising its
27 discretion to change a prior order, the court must cause advance notice to be given to the social
28 worker, child’s counsel, and the child’s parent or guardian. (§ 386.)

1 Thus, this court has the power to modify its prior order regarding placement with XXXX
2 XXXX as requested by the children.

3
4 **II. ASFA APPROVAL AND LIVE SCAN RESULTS ARE NOT REQUIRED FOR**
5 **TEMPORARY PLACEMENT WITH A RELATIVE OR NONRELATIVE**
6 **EXTENDED FAMILY MEMBER**

7 When a child is first detained, if a relative or NREFM requests placement, the child welfare
8 agency must immediately assess the relative for placement *pending* the detention hearing.
9 Neither ASFA² approval nor live-scan fingerprinting is required. Section 309(d) provides in
10 pertinent part:

11 (d)(1) If an able and willing relative, as defined in Section 319, or an able and
12 willing nonrelative extended family member, as defined in Section 362.7, is
13 available and requests temporary placement of the child pending the detention
14 hearing, the county welfare department shall initiate an assessment of the
15 relative's or nonrelative extended family member's suitability, which shall
16 include an in-home inspection to assess the safety of the home and the ability of
17 the relative or nonrelative extended family member to care for the child's needs,
18 and a consideration of the results of a criminal records check conducted pursuant
19 to subdivision (a) of Section 16504.5 and a check of allegations of prior child
20 abuse or neglect [i.e., CACI check] concerning the relative or nonrelative
21 extended family member and other adults in the home. *Upon completion of this*
22 *assessment, the child may be placed in the assessed home.* For purposes of this
23 paragraph, and except for the criminal records check conducted pursuant to
24 subdivision (a) of Section 16504.5, the standards used to determine suitability
25 shall be the same standards set forth in the regulations for the licensing of foster
26 family homes.

27 (2) Immediately following the placement of a child in the home of a relative or a
28 nonrelative extended family member, the county welfare department shall
evaluate *and approve or deny the home for purposes of AFDC-FC eligibility*
pursuant to Section 11402. ...

(Italics added.)

² ASFA is short for the Adoption and Safe Families Act, Pub. L. No. 105-89. Under ASFA,
states must apply the same standards to any foster family home, including the home of a relative,
for which federal foster care funds are claimed. (42 U.S.C. § 671(a)(10); 45 C.F.R. § 1355.20.)

1 The criminal records check mandated by section 309(d)(1) is a name check conducted
2 through the California Law Enforcement Telecommunications System (CLETS). (§§ 16504.5,
3 subd. (a), 361.4, subd. (b); Pen. Code, § 11105.) The county must perform a CLETS check
4 whenever it is considering placement in the home of a relative or other person who is not a
5 licensed or certified foster parent. (§ 361.4, subd. (b.) Fingerprint check results are not required
6 for placement at this stage.³ Instead, a live-scan fingerprint check must be *initiated* within 10
7 days of the CLETS check. (§§ 361.4, subd. (b), 16504.5, subd. (a)(2).)

8 In 2004, Assembly Bill 1913 was passed amending sections 309, 319, and 361.4 to
9 clarify that fingerprint check results are not required prior to temporary placement with a relative
10 whose CLETS results show no criminal record. (Stats. 2004, c. 373 (A.B. 1913), § 1; see also
11 Assem. Com. on Human Services, Analysis of Assem. Bill No. 1913 (2003-2004 Reg. Sess.) as
12 amended Apr. 14, 2004, pp. 1-3, attached as Exhibit 1.) As amended, the statutes now clearly
13 distinguish between the “assessment” that is required for temporary placement with a relative or
14 NREFM and the “approval” necessary to be eligible for AFDC-FC (also known as ASFA or
15 Title IV-E) funding. (§§ 309, subd. (d)(1), (2), 319, subd. (d)(2), (f).)

16 Under section 319, at the detention hearing, if the court determines the child cannot be
17 released to a parent or guardian, “the court shall determine if there is a relative who is able and
18 willing to care for the child, and has been assessed pursuant to paragraph (1) of subdivision (d)
19 of Section 309.” (§ 319, subd. (d)(2).) The court must consider the social worker’s
20 recommendation based on the assessment pursuant to section 309(d)(1), including the results of
21 the CLETS and CACI checks, before ordering the child placed with the relative. (§ 319, subd.
22 (f)(3).)

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26 ³ Final placement decisions (i.e., placement order made at disposition hearing) must be based on
27 fingerprint results. (Pen. Code, § 11105, subd. (b)(17).) An FBI criminal records check is also
28 required, but a home may be approved prior to receipt of the FBI results so long as the
prospective caregiver and all other adults in the home sign a sworn statement that they have
never been convicted of a crime in the United States. (§ 309, subd. (d)(3).)

1 All that is necessary is an in-home inspection to assess the safety of the home and the
2 prospective caregiver's ability to meet the child's needs, and clean CLETS and CACI checks on
3 all adults in the home. In this case, the only thing preventing placement with XXXX XXXX is
4 receipt of the CLETS and CACI results, which the social worker should have obtained prior to
5 the detention hearing. XXXX XXXX's contact information was in the detention report.
6 (XXXX/07 Det. Rpt., p. 9.) Under section 309(d)(1), the Agency is required to assess and place
7 with an available relative or NREFM if appropriate immediately, pending the detention hearing.
8 The reason of course is to spare a child who is already traumatized by being removed from his or
9 her home the added trauma of being sent to live with total strangers if someone whom the child
10 knows is available to care for him or her.

11 **CONCLUSION**

12 For the reasons stated, children's counsel respectfully requests that the court modify its
13 order giving the Agency discretion to place the children with XXXX XXXX pending ASFA
14 approval and receipt of live-scan results, and instead order the Agency to temporarily place the
15 children in home if the CLETS and CACI results for all adults in the home are clean. In
16 addition, children's counsel asks the court to order that if the placement does not occur within 24
17 hours of the court's order, that the current case-carrying social worker appear in court and
18 explain why.

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21 Dated: February 14, 2007

Respectfully submitted,

Law Offices of XXXX

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25 _____
By XXXX XXXX, Esq.
Attorneys for the Children
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