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Attorney for minor

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF XXX

In the Matter of	) Case Number: XXXX
)
	) MEMORANDUM OF POINTS AND
	) AUTHORITIES IN SUPPORT OF CITY OF XX'S
Baby Boy Doe,	) MOTION TO QUASH SUBPOENA DUCES
	) TECUM FOR RECORDS PERTAINING TO
Minor(s)	) CHILD SURRENDERED PURSUANT TO
	) CALIFORNIA'S "SAFE HAVEN" ACT
)
	) Date: X, 2003
	) Time: 8:30 a.m.
	) Dept.: XXX
)

I.
INTRODUCTION

Before the court is a two month old child who was surrendered to the custody of XX City Fire Department (hereinafter XXFD) personnel at Fire Station 20 on or about May XX, 2003. The child had been brought to XXFD by a woman who stated she was a neighbor of the mother of the child. This woman further indicated to FD personnel that she brought the baby to the Fire Station immediately after the mother had brought the baby to her stating that she did not want to/could not care for the child. [see Detention Report 5/7/03, p.4.] The baby was approximately twelve hours old and his umbilical cord was tied off with a wire. [see report 6/18/03, p. 9.] He was taken by XXFD to Children's Hospital where it was determined that the child had not been born with drugs in his system nor did he exhibit any symptoms of drug withdrawal. He was found to be in good health, although he is receiving treatment

1 for club foot and appears to be developmentally normal. [see PRC 6/16/03, pp.6-9.] Upon release from
2 Children's Hospital he was placed in a foster/adoptive home.

3 On May XX, 2003, the County Social Services Agency (hereinafter Agency) filed a petition
4 under Welfare and Institutions Code (hereinafter WIC) section 300 (b) and (g) seeking to declare the
5 child a dependent. This petition was filed under the heading "Safe arms for Newborns" which refers to
6 the law decriminalizing the abandonment of newborns, Health and Safety Code section 1255.7
7 (hereinafter H&S 1255.7).¹ On the face sheet of the May 7, 2003, Detention Report, the Agency also
8 indicated its intent to "contact[] the Placement and Recruitment Unit [Adoptions] regarding Voluntary
9 Surrender of Newborn Infants to alert them of minor's detention and pending placement."
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11

12 ¹ Health and Safety Code §1255.7 provides in pertinent part: (2014 review: statutory language changes based on amendments)

13 "(a)(1) A person designated pursuant to Section 271.5 of the Penal Code shall take physical custody of a minor child 72 hours
14 old or younger pursuant to this section if the parent or other person having lawful custody of the child voluntarily surrenders
15 physical custody of the child to that person. The person designated shall place a coded, confidential ankle bracelet on the
16 child provide, or make a good faith effort to provide, the parent or other person surrendering the child a copy of a unique,
17 coded, confidential ankle bracelet identification in order to facilitate reclaiming the child pursuant to subdivision (e)...

18 (2)The person designated shall provide, or make a good faith effort to provide, the parent or other person surrendering the
19 child a medical information questionnaire, which may be declined, voluntarily filled out and mailed in the envelope provided
20 for this purpose. This medical information questionnaire shall not require any identifying information about the child or the
21 parent or person surrendering the child, other than the identification code provided in the ankle bracelet placed on the child...

22 (c)As soon as possible, but in no event later than 48 hours after taking custody of a child, a person who takes physical
23 custody of a child under this section shall notify protective services or a county agency providing child welfare services
24 pursuant to Section 16501 of the Welfare and Institutions Code, that the person has physical custody of the child pursuant to
25 this section.

26 (d)Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare
27 and Institutions Code shall assume temporary custody of the child pursuant to Section 300 of the Welfare and Institutions
28 Code immediately on receipt of notice under subdivision (c). Child protective services or the county agency providing child
welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately investigate the
circumstances of the case and file a petition pursuant to Section 311 of the Welfare and Institutions Code...

(e)If, prior to the filing of a petition under subdivision (d), a person who has voluntarily surrendered a child pursuant to this
section requests that the hospital return the child, and the hospital still has custody of the child, the hospital shall either return
the child to the person or contact a child protective agency if a health practitioner at the hospital knows or reasonably
suspects that the child has been the victim of child abuse or neglect...

(f)Subsequent to the filing of a petition under subdivision (d), if within 14 days of the voluntary surrender described in this
section the person who surrendered custody returns to claim physical custody of the child, the child welfare agency shall
verify the identity of the person, conduct an assessment of the person's circumstances and ability to parent, and request that
the juvenile court dismiss the petition for dependency and order the release of the child, if the child welfare agency
determines that one of the conditions described in subdivisions (a) to (d), inclusive, of Section 319 of the Welfare and
Institutions Code currently exist...."

1 The Agency executed and served a subpoena on June XX, 2003 on FD seeking production of all
2 records relating to the surrender of the baby. To date, neither the birth mother nor the person who
3 surrendered the baby have made any attempts to reclaim him.

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5 **II.**

6 **THIS CASE FALLS SQUARELY WITHIN THE PROVISIONS OF HEALTH AND SAFETY**
7 **CODE §1255.7**

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9 In its response to the City Attorney's motion the Agency raises the issue as to whether or not the
10 instant case is covered by H&S 1255.7. Specifically, the Agency claims that it is in need of the
11 information sought in order to comply with a statutory duty to investigate which includes the need to
12 determine whether "the child was brought to the fire station by an '... other person having lawful
13 custody of the minor child 72 hours old or younger...' " [Response p. 2.] There appears to be no
14 argument as to the age of the child at surrender; the Agency quotes hospital estimates that the child was
15 12 hours old when brought to the Fire Station, noting that the umbilical cord was still attached.
16 Similarly, there is no question that the child was brought to an approved location and given to a person
17 authorized by statute to receive the newborn. There is no dispute that this child was younger than 72
18 hours when the birth mother made her intention known to give-up the newborn child. The birth mother
19 made good on her intentions when she gave the healthy baby to another person to safely surrender.
20 Despite a confidential coded ankle bracelet being provided by which the baby could have been
21 reclaimed, no one has appeared within the 14-day period (or since) seeking the child. All the evidence
22 indicates that, the birth mother did not want the child but acted responsibly by surrendering him so that
23 the state can assure that Baby Boy Doe is properly cared for and receives a permanent, safe and stable
24 home.

25
26 This statute was designed to permit parents of unwanted newborn children the age of 72 hours or
27 younger to surrender the child to designated personnel, rather than simply abandoning the child and
28 thereby risking criminal liability for themselves and death for the child. Nowhere in the statute did the

Legislature require designated receiving personnel or any other authority to determine a legal status or relationship between the child and the surrendering party prior to accepting custody of the child. Nor does the statute require that the surrendering party supply any identifying information. There are not viable concerns about the applicability of H&S 1255.7 to this case.

III

LEGISLATIVE PURPOSE FOR ENACTING HEALTH AND SAFETY CODE §1255.7

The primary concern expressed by the Agency is whether the person who brought Baby Boy Doe to the Fire Station was a “person having lawful custody of the minor....” Further, the Agency complains that XXFD fails to support its contention that the subpoena seeking the identity of the person surrendering the baby would directly defeat the purpose of the law, in that the XXFD motion cites no legislative language or other authority² as to statutory intent.

It is a basic tenet of legal analysis that “[i]n construing a statute, a court must ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citation] To determine legislative intent, we examine the words of the statute applying ‘their usual, ordinary, and common sense meaning based upon the language the Legislature used and the evidence purpose for which the statute was adopted.’ [Citation] We ‘must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.’” (*Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010.)

Health and Safety Code §1255.7 was enacted in the year 2000 (Stats. 2000, c. 824 (S.B. 1368), §1). The statute was enacted by the Legislature to remedy the problem of persons abandoning their newborn infants resulting in the death of those infants through a lack of care and/or being abandoned in unsafe and unsuitable locations. The legislative history of Senate Bill 1368 which enacted the current “Safe Haven” law is quite clear as to the purpose of this law:

² A diligent search reveals no judicial decisions construing the “Safe Haven” law in California. Similarly, a search for judicial decisions in other states that have enacted similar “Safe Haven” law reveals no appellate decisions construing those statutes. The lack of reported decisions is not surprising, because of the very recent vintage of “Safe Haven” laws in the United States.

1 “In recent years, reports of babies being abandoned in trash bins, restrooms and parking lots have
2 filled the news pages and the airwaves. In New Jersey, a high school student attending her senior prom
3 delivered a baby in a restroom, hid it in a trashcan, and returned to the dance. In Delaware, a college
4 couple wrapped their newborn in plastic and put it in a motel dumpster. California has had its share of
5 such incidents. Last month, a baby girl was found dead, floating in a San Joaquin County ditch. The
6 coroner determined that the baby was alive when it was abandoned, but later drowned. The XX County
7 Coroner’s lead investigator states his office handles 15 to 20 dead, abandoned children every year. In
8 Calimesa, Riverside County, XX established the “Garden of Angels” as a final resting place for dead
9 abandoned infants in Southern California.

10 Responding to news reports of abandoned babies, some two dozen states initiated laws to
11 encourage mothers to surrender their infants at safe locations, such as hospitals, police stations, and
12 firehouses. In 1999, Texas adopted the first and only such law now in effect. Other states with pending
13 legislation include New York, Florida, and Pennsylvania. Programs to protect abandoned babies have
14 been organized in several other states, including Minnesota, and cities such as Mobile, Alabama.
15 Internationally, Germany has adopted the use of “baby slots” in which unwanted newborns may be
16 deposited anonymously. A similar practice, called the “revolving crib,” is now in place in
17 Johannesburg, South Africa. Hungary also maintains anonymous drop-off locations. **In all**
18 **jurisdictions, the anonymity of the surrendering person is preserved....**” (Analysis, Senate Rules
19 Committee, Floor Analysis, Unfinished Business [concurrence to amendments made in Assembly]
20 August 30, 2000.)

21 The anonymity of the person who surrenders the child was deemed an essential and key element
22 of the bill:

23 “Two of the key issues in this bill are the confidentiality of identifying information about the
24 surrendered newborn, **and the anonymity provided to the person who surrenders custody.**
25 Since the goal of the bill is to encourage those who would abandon their baby, to the elements or
26 in other unsafe places, to instead go to a hospital emergency room with confidence that they
27 would not be identified and punished for abandoning the newborn, **complete anonymity is an**
28

absolute necessity, according to the author. **Thus, no questions will be asked of the person who surrenders the child.**” (Analysis, Senate Judiciary Committee, April 25, 2000.)

Further, the issue at hand was specifically addressed by the Legislature and it was determined that SB1368 (the precursor Senate Bill), “[p]rovides a presumption that a person who voluntarily surrenders physical custody of a child to a designated employee has lawful physical custody of the child.” (Analysis, Senate Judiciary Committee, August 8, 2000.)

Seeking the identity of the “other person surrendering the child” would clearly frustrate the policy choices made by the Legislature to protect the anonymity of birth parents who voluntarily surrender their babies and the ultimate goal of preventing unnecessary deaths of newborns. If the Legislature had intended to limit the class of persons who could surrender a newborn to the parents, it could easily have done so. It did not. The language allowing “other person(s)” to take on this responsibility provides for the foreseeable situation in which a woman who has just given birth may be physically unable or afraid to take the baby to a safe location themselves and turns instead to a trusted “other” to do so. If the Agency is allowed to routinely seek the identity of and subsequently interview persons surrendering a baby it will soon become known to the very community intended to be affected by this statute that there is no true anonymity and therefore no true “Safe Haven.” Parents of unwanted newborns will again be faced with only the option of abandonment if they do not want to risk having their identities revealed.

IV

**HEALTH AND SAFETY CODE §1255.7 IS A SPECIFIC STATUTE THAT IS CONTROLLING
OVER THE MORE GENERAL INVESTIGATIVE PROVISIONS OF WELFARE AND
INSTITUTIONS CODE §16501 IN THE LIMITED CIRCUMSTANCES SPECIFIED IN THE
“SAFE HAVEN” LAW**

The Agency in its motion is concerned about the apparent conflict regarding the investigative provisions of WIC §16501 and the anonymity requirements of H&S 1255.7. Long-standing rules of

1 statutory construction resolve any perceived conflict. Pursuant to normal rules of statutory construction:
2 “‘It is the general rule that where the general statute standing alone would include the same matter as the
3 special act, and thus conflict with it, the special act will be considered an exception to the general statute
4 whether it was passed before or after such general enactment.’...The rule is embodied in statutory form.
5 ‘[W]hen a general and particular provision are inconsistent, the latter is paramount to the former.’ (Code
6 of Civ. Proc., section 1859.)” (*Garcia v. County of Sacramento* (2002) 103 Cal.App.4th 67, 77.)

7 Upon receipt of a referral of any sort of suspected child abuse or neglect, subsection (f) of WIC
8 16501 requires the Agency to conduct an investigation “to determine the necessity for providing initial
9 services and crisis intervention to maintain the child safely in his or her own home or to protect the
10 safety of the child.” In cases such as the one before the court, where a newborn has been surrendered, it
11 is clear that no intervention is being sought or would be effective in maintaining the child in the birth
12 parents’ home. The key to an unwanted child’s protection lies in being delivered to authorities who can
13 ensure on-going care and safety. Therefore, the Agency’s investigative duties are discharged upon
14 receiving the child from designated personnel and ensuring the safe transfer to appropriate placement.
15 All of that has already been accomplished in this case.

16 17 **SUMMARY**

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19 As discussed above, the child before this court squarely falls within the narrow provisions of
20 Health and Safety Code §1255.7. This court should honor the anonymity provisions of the “Safe
21 Haven” Act and bar the Agency from seeking information whose only logical purpose would be to
22 discover the identity of the birth mother and the person who safely surrendered Baby Boy Doe.

23 The Legislature in enacting the “Save Haven” law recognized that newborn children have a right
24 to life itself, as well as being free of abuse and neglect. The Legislature struck the correct constitutional
25 balance between the right of a newborn to survive and the rights of society as reflected in the criminal
26 penalties and dependency statutes that would otherwise affect parents abandoning a baby. By limiting
27 the reach of the statute to children 72 hours-old or younger, who have been safely delivered to
28 designated entities, and protecting the anonymity of parties surrendering the babies, the Legislature has

1 crafted a mechanism that best serves the societal goal of preventing the abandonment and risk of death
2 for unwanted newborns.

3 Minor's counsel asks the court to follow the spirit as well as the letter of Health and Safety Code
4 §1255.7 and quash the subpoena issued by the Agency as requested by FD through the City Attorney.

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8 Dated: July 3, 2003

Respectfully submitted

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