



# PERMANENCY 101

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# TYPES OF PERMANENCY

- ◉ Reunification
- ◉ Termination of Parental Rights (TPR)
  - Voluntary TPR
  - Involuntary TPR
  - Expedited
- ◉ Consent to Adopt
- ◉ Transfer of Legal and Physical Custody (TLC)
- ◉ Permanent Custody to the Agency
- ◉ Temporary Legal Custody to the Agency
- ◉ Family Reunification Act

# REUNIFICATION

- ◎ Trial Home Visit (“THV”)
  - Not available until a CHIPS adjudication.
  - Legal custody remains with the County but allows the child to reside with the parent from whom custody was removed.
  - Maximum time is 6 months.
  - Time under THV counts toward the total out of home placement time for determining permanency.
  - If THV is terminated by the Agency without prior court authorization the Agency must notify the court and schedule a hearing within 10 days.
  - If the child is on a THV 12 months after the child was placed in foster care, or the home of a non-custodial parent, the Agency may file a report with the court regarding the child’s and the parent’s progress on the THV and the Agency’s reasonable efforts to finalize the child’s safe and permanent return to the parent in lieu of filing a permanency petition. Minn. Stat. §260C.503, subd. 3(c).

# TERMINATION OF PARENTAL RIGHTS AND ADOPTION

- ◎ TPR and adoption, or guardianship to the commissioner of human services through a consent to adopt, are preferred permanency options for a child who cannot return home. Minn. Stat. §260C.513, subd. (a).
- ◎ Need to articulate why adoption is not in the child's best interests.

# TERMINATION OF PARENTAL RIGHTS

- Court must find that one statutory ground has been proven by clear and convincing evidence.
- Court shall make specific findings regarding the nature and extent of efforts made by the Agency to rehabilitate the parent and reunite the family.
- Court shall make a specific finding that TPR is in the best interests of the child and shall analyze: 1) the child's interests in preserving the parent-child relationship; 2) the parent's interests in preserving the parent-child relationship; and 3) any competing interests of the child.
- When the interests of parent and child conflict, the interests of the child are paramount.
- TPR in case of an Indian Child requires proof beyond a reasonable doubt and testimony by a Qualified Expert (QEW) that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

# VOLUNTARY TPR

- ⦿ A parent may voluntarily terminate their parental rights.
- ⦿ Must be in writing.
- ⦿ Must provide a factual basis that satisfies the court that “good cause” exists to support the parents voluntary TPR.
- ⦿ Amend the petition.
  - Can do it on the record.
- ⦿ Does not create a presumption if good cause found.
- ⦿ Is it always the right way to resolve the matter?

Minn.Stat. §260C.301

# INVOLUNTARY TPR

- ◉ Following trial
- ◉ Parent admits to the allegations in the petition—not good cause.
- ◉ Terminate by default [Minn.R.Juv.Prot.Proc., Rule 18].
- ◉ Creates a presumption of palpable unfitness if the parent has another child.

# INDIAN CHILD WELFARE ACT

- ◎ Tribes generally do not support TPRs
- ◎ A TPR shall not be ordered in the absence of testimony of at least one qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.  
Minn.R.Juv.Prot.Proc., Rule 49.03.
- ◎ If it is an ICWA case always include the tribe and communicate with the tribe as much as possible.

# EXPEDITED

◎ The Agency must ask the county attorney to immediately file a TPR petition when:

1) the child has been subjected to egregious harm as defined in section 260C.007, subd. 14

2) the child is determined to be the sibling of a child who is subjected to egregious harm;

3) the child is an abandoned infant as defined in section 260c.301, subd. 2 (a), clause (2);

4) the child's parent has lost parental rights to another child through an order involuntarily terminating the parent's rights;

5) the parent has committed sexual abuse as defined in section 626.556, subd. 2, against the child or another child of the parent;

6) the parent has committed an offense that requires registration as a predatory offender under 243.166, subd. 1b, paragraph (a) or (b);

or  
7) another child of the parent is the subject of an order involuntarily transferring permanent legal and physical custody of the child to a relative under this chapter or a similar law of another jurisdiction.

# EXPEDITED CONT.

- ◉ The County Attorney shall file a termination of parental rights petition unless the Agency decides to file a TLC or a CHIPS petition instead. Minn.Stat. §260C.503, subd. 2(a) and 2(d).
- ◉ Prosecutorial discretion if unable to prove best interests/safety.
- ◉ Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon determination by the Court that a petition has been filed stating a prima facie case that:
  - 1)Parent has subjected a child to egregious harm;
  - 2)Parental rights to another child have been involuntarily terminated;
  - 3) The child is an abandoned infant, is deserted and parent shows no sign of returning;
  - 4)Parent's custodial rights have been involuntarily transferred;
  - 5) Provision of services or further services is futile, and therefore unreasonable.
- ◉ Usually File CHIPS first.
- ◉ What do you do with prior involuntary on one parent?
- ◉ If criminal charges have been filed against the parent, the County Attorney shall determine which matter should proceed to trial first.

# FINDINGS NEEDED FOR TPR

- ◎ Admit/Deny Hearing (Held no later than 12 months)
  - Court must determine there is a prima facie basis for finding that the Agency made reasonable/active efforts, for reunification or that reasonable efforts for reunification are not required under §260.012.
  - Court must determine whether the petition states a prima facie case in support of one or more statutory grounds set forth in the petition and a prima facie showing that a juvenile protection matter exists and the child is the subject of the matter. Minn.R.Juv.Prot.Proc., Rule 34.03, subd 3.
  
- ◎ Pre-trial Hearing (Held at least 10 days prior to trial)
  - determine whether a settlement of any or all of the issues has occurred
  - determine service of all parties
  - advise of right to counsel to unrepresented party
  - determine whether child will testify
  - identify any unresolved discovery issues
  - resolve any pending pretrial motions
  - identify and narrow issues of law and fact
  - exchange witness lists and a brief summary of each witness' testimony
  - exchange exhibit lists
  - confirm trial dates

# FINDINGS NEEDED FOR TPR CONT.

## ◎ Transfer of Guardianship Order

- The orders terminating parental rights shall be on a document separate from the findings. Minn.Stat. §260C.317, subd. 3(b).

# CONSENT OF PARENT TO ADOPTION

- ◉ Parent voluntarily waives rights and consents to the adoption by a specific adoptive parent(s).
- ◉ Court “accepts” the parent’s written consent to adopt after executed before the court.
- ◉ Consent becomes irrevocable upon acceptance of the court. (In CHIPS not private cases.)
- ◉ The adoptive parent and Agency need to agree about the consent.
- ◉ Court orders the child placed under the guardianship of the commissioner of human services.

§260C.515, subd. 3

# CONSENT OF PARENT TO ADOPTION (CONT.)

- ◉ Don't need a TPR petition to initiate, but often starts that way.
- ◉ If an adoption is not finalized by the identified prospective adoptive parent within 6 months of consent, the agency shall pursue adoptive placement in another home unless the court finds that the failure to finalize is not due to the prospective adoptive parent.

# TRANSFER OF PERMANENT LEGAL AND PHYSICAL CUSTODY

- ◉ Only available if the Court finds that TPR is not in the child's best interests.
- ◉ Court must review the suitability of the prospective legal and physical custodian.
  - How?
- ◉ The new custodians cannot return the child to the parent without the court's approval and without first notifying the Agency as a party.
- ◉ Court may maintain jurisdiction after the transfer to ensure services are delivered.
- ◉ If another party objects, that party may file an opposing petition within certain timelines.

§260C.515, subd. 4

# PERMANENT CUSTODY TO THE AGENCY

- ◉ Agency must present compelling reasons that no other permanency disposition is in the child's best interests.
- ◉ Child must be at least 16 years of age and has been asked about the child's desired permanency outcome.
- ◉ The Agency has made reasonable efforts to locate and place the child with an adoptive family or a family agreeable to a transfer of custody, but have been unsuccessful.
- ◉ The parent will continue to have visitation or contact with the child and will remain involved in planning.

MN Stat. §260C.515, subd. 5

# TEMPORARY LEGAL CUSTODY TO THE AGENCY

- ⦿ Temporary custody may be ordered for continued placement of the child in foster care for a specified period of time.
- ⦿ The sole basis for the CHIPS adjudication is the child's behavior—not the parents.
- ⦿ Court finds this option is in the best interests of the child.
- ⦿ Court approves the Agency's compelling reasons that neither an award of permanent legal and physical custody to a relative or termination of parental rights is in the child's best interest.
- ⦿ The child may not continue in foster care for longer than one year.
- ⦿ When might this be used?

MN Stat. §260C.515, subd. 6

# FAMILY REUNIFICATION ACT

- ◉ Reestablishment of the legal parent and child relationship of a child under the guardianship of the commissioner of human services and a previously terminated legal parent.
- ◉ County Attorney OR parent whose parenting rights were terminated may file a petition to reestablish.
- ◉ (Where CA petitions) Both Agency and the County Attorney must agree it is in the child's best interest.
- ◉ The parent has corrected the conditions that led to the TPR.
- ◉ Parent is capable of providing day-to-day care and maintain the child's safety and welfare.
- ◉ Child has been in foster care for at least 48 months.
- ◉ Child ~~is 15 years or older and~~ has not been adopted.
- ◉ Child is not subject to a written adoptive placement agreement.
- ◉ Parent can not have had a TPR due to sexual abuse or other conduct that resulted in the death of a minor, or has been convicted of a crime under 260C.007, subd. 14.

Minn.Stat. §260C.329- effective August 1, 2019

# **“BEST INTERESTS” IN PERMANENCY PROCEEDING**

- ◉ In making a permanency disposition order or TPR, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and other important persons whom the child has resided or had significant contact. Minn.Stat. §260C.511 (b).
- ◉ The “best interests of the child” means all relevant factors to be considered and evaluated. Minn.Stat. §260C.511 (a).

# REQUIRED COURT FINDINGS FOR PERMANENCY ORDERS (NOT TPR)

- ◉ Must find how the child's best interests are served by the order.
- ◉ The nature and extent of the Agency's reasonable/active efforts to reunify the child.
- ◉ The parent's efforts and ability to use services to correct the conditions which led to the out-of-home placement; and the conditions which led to the placement have not been corrected so that the child can safely return home.
- ◉ Minn.Stat. §260C.517.

# NORTHSTAR

- ◎ Northstar Care for Children authorizes certain benefits to support a child in need who is served by the Minnesota child welfare system.
- ◎ A child eligible under this chapter has experienced a child welfare intervention that has resulted in the child being placed away from the child's parents' care.
- ◎ It is critical that stable benefits be available to caregivers to ensure that the child's needs can be met.

MN Stat. §256N

# NORTHSTAR (CONT.)

- ◉ Northstar Care for Children focuses on the child's needs and strengths, and the actual level of care provided by the caregiver, without consideration for the type of placement setting.
- ◉ In this way caregivers are not faced with the burden of making specific long-term decisions based upon competing financial incentives (e.g., transfer of custody vs. adoption).
- ◉ Although paid to the caregiver, these benefits must be considered benefits of the child rather than of the caregiver.

# NORTHSTAR (CONT.)

## Eligibility

- ⦿ Judicial determination that a transfer of permanent legal and physical custody to a relative is in the child's best interest.
- ⦿ Have been removed from the child's home on voluntary placement agreement or court order;
- ⦿ Have resided with the prospective relative custodian, who has been a licensed child foster parent for at least 6 consecutive months; or
  - Have received from the commissioner an exemption from the 6-months requirement
- ⦿ Consult with children 14 years and old
- ⦿ Background study for custodian.

# **NORTHSTAR (CONT.)**

- ◎ Agency must determine:
  - Reunification and adoption are not appropriate permanency options for the child
  - Child demonstrates a strong attachment to the prospective relative custodian and the prospective relative custodian has a strong commitment to caring permanently for the child

# NORTHSTAR (CONT.)

## ◎ Northstar Case

### ■ Required Findings - “Defer” Finalization

- TLC and receipt of funds is in child’s best interest.
- Relative must be fully licensed for six months in order to be eligible (unless exception made)
- Adoption is not in the child’s best interest and the agency made efforts to discuss adoption with the proposed custodian.
- Reasons to separate siblings (if applicable).

## ◎ No Northstar (relative waives or custody to other parent)

- May finalize without Northstar assistance, but will be a permanent bar to receipt of assistance.

# SETTLEMENT IDEAS

- ◉ Joint custody with parenting plan.
- ◉ Joint legal custody and sole physical custody to parents and/or grandparents.
- ◉ Contact agreements.
- ◉ Best interest standard/endangerment under 518.
- ◉ Best practice to have a settlement conference/mediation/family meeting to resolve case with whole family.
- ◉ Stayed TPR with conditions.

# POST PERMANENCY

- ◉ Motion to Modify Custody/Agency is a party
- ◉ Failed Permanency within one year of placement under 260C.515, subd. 4, 5 or 6 the child must be returned to the residential facility where the child was placed prior to permanency and hold a hearing within 10 days.
- ◉ Confusing if failed permanency after one year (whose case is it county of proposed custodian or county who transferred custody).
- ◉ Court Review of Permanent Custody to Agency
  - Once a year (some counties may choose to have them more often)
- ◉ Adoption Review Hearings
  - Every 90 days

# PRACTICE POINTS

- ◉ Plan ahead and think about concurrent plan from the start.
- ◉ Read the Juvenile Protection Rules/Judge's Benchbook.
- ◉ CJI Meetings.
- ◉ Ask MCAA Juvenile Law Committee.
- ◉ Read Appellate Court opinions
- ◉ Ask for templates
- ◉ Collaborate often with your agency
- ◉ Networking
- ◉ Shadowing another attorney
- ◉ CLEs
- ◉ Training to Agency and Law Enforcement

# QUESTIONS

- ◉ Deb Simonson, Assistant Scott County Attorney, 952-496-8648
- ◉ Rachel Cornelius, Waseca County Attorney, Waseca County, 507-837-5328,
- ◉ Tracy Harris, Assistant Sherburne County Attorney, 763-765-4755