

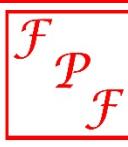
# Child Protection Services Pro Se Help Kit

## Video Series

### #10 – Disposition Through Permanency

Family Preservation Foundation, Inc.

# DISPOSITION THROUGH PERMANENCY



- Hello, I'm Dwight Mitchell the founder of Family Preservation Foundation. Welcome to our Child Protection Services Pro Se Help Kit video series.
- I hope you enjoy the content and it allows you to better understand your rights and options while involved with CPS.

# DISPOSITION THROUGH PERMANENCY



- After a 22-month battle, I successfully defeated Dakota County Social Services in Minnesota State court and had my children returned. Although filled with anguish, it was an education to say the least, and I will be passing on the benefit of my knowledge, and “Lessons Learned”, while cross referencing Minnesota State Statutes, and case law which is readily available on Google Scholar.

# DISPOSITION THROUGH PERMANENCY



■ I would like to advise you that I am not an attorney, licensed to practice law, nor am I providing legal services. I recommend you obtain your own attorney if possible and review my video in this series titled “Working with your Attorney”. This is a very important unit in our series, and will assist you in not being misguide like I was, by my attorney’s legal strategy, incompetence and/or greed.

# DISPOSITION THROUGH PERMANENCY



- This video series is for education purposes only. I will go over the beginning, middle and the end of the CPS process and what you can do in your defense and fight against CPS! This will be hard work for you, and a lot of reading, but nothing worthwhile in life is free. The Minnesota templates I provide are examples only and must not be used as is.

# DISPOSITION THROUGH PERMANENCY



- You must create your own court filings while acting in a Pro Se capacity. I do not have examples of everything, but ask other group members, because they may be able to help you. **BUT REMEMBER**, you are not allowed to stand in court and say that someone helped you, or told you to do it a certain way. You are doing this for yourself. You must read, review and submit court filings for yourself.

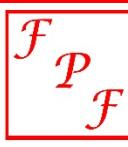
# HEARINGS TO REVIEW DISPOSITION



## Hearings to Review Disposition

Family Preservation Foundation, Inc.

# HEARINGS TO REVIEW DISPOSITION



- Minn. R. Juv. Prot. Proc. 41.06 Hearings to Review Disposition, Subd. 1.Timing.
- When disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

# HEARINGS TO REVIEW DISPOSITION



- Minn. R. Juv. Prot. Proc. 41.06, Subd. 2. Procedure in Reviewing Disposition.
- (a) Legal Custody to Agency With Foster Care. When the disposition is transfer of legal custody to the responsible social services agency, the court shall conduct a hearing at least every ninety (90) days to review whether foster care is necessary and continues to be appropriate or whether the child should be returned to the home of the parent or legal custodian from whom the child was removed.

# HEARINGS TO REVIEW DISPOSITION



Topics to be reviewed include:

- OHPP progress
- Reasonableness of the OHPP
- Reasonable/active efforts
- Disposition
- Child's wellbeing

# HEARINGS TO REVIEW DISPOSITION



- Minn. R. Juv. Prot. Proc. 41.06, Subd. 3. Procedure.
- Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 15. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

# HEARINGS TO REVIEW DISPOSITION



- Minn. R. Juv. Prot. Proc. 41.04 Procedure; Evidence
- **Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties to be heard.**
- The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter...

# QUESTIONS/ISSUES TO RAISE DURING REVIEW HEARINGS



- Things that are going well in case
  - Can help to bolster credibility to highlight parent's strengths/successes
- Requests regarding visitation
  - Barriers to visitation
  - Increase visitation
  - Supervised vs. unsupervised

# QUESTIONS/ISSUES TO RAISE DURING REVIEW HEARINGS



- Barriers to services
  - Transportation
  - Scheduling conflicts
  - Language barriers
  - Insurance coverage
  - Parent's access services

# QUESTIONS/ISSUES TO RAISE DURING REVIEW HEARINGS



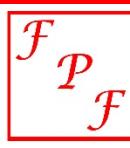
- Barriers to services
  - Transportation
  - Scheduling conflicts
  - Language barriers
  - Insurance coverage
  - Parent's access services

# QUESTIONS/ISSUES TO RAISE DURING REVIEW HEARINGS



- Parent's concerns about child/ren's placement
- Safety concerns about current placement
- Minn. Stat. §260.012, subd. 2(d):
  - Siblings should be placed together... at the earliest possible time unless it... would be contrary to the safety or well-being of any of the siblings or unless it is not possible after reasonable efforts...
  - Has county thoroughly explored eligible relatives

# QUESTIONS/ISSUES TO RAISE DURING REVIEW HEARINGS



- Factual disputes involving reports
  - Be sure to consult with all parties and have all the facts before raising significant issues in court
- Additional services that may be helpful
- Services that may be unhelpful
- Change of disposition opposition. (or THV)
- Use timelines to your advantage. Tasks/Hearing must take place at specified times according to state statute.

Minn. Stat. 260C.178, Subd. 3. Parental visitation.

- (a) If a child has been taken into custody... and the court determines that the child should continue in foster care, the court shall include in its order notice that the responsible social services agency has a duty to develop and implement a plan for parental visitation of and contact with the child **that promotes the parent and child relationship unless the court finds that visitation would endanger the child's physical or emotional well-being.**

Minn. Stat. 260C.178, Subd. 3. Parental visitation.

- (b) ... the plan for parental visitation required under section 260C.212, subdivision 1, paragraph (c), clause (5), must be developed and implemented by the agency and the child's parents as soon **as possible after the court's order for the child to continue in foster care.**

Minn. Stat. 260C.178, Subd. 3. Parental visitation.

- (c) When a parent has had no or only limited visitation or contact with the child prior to the court order for the child to continue in foster care, the court may order a visitation plan developed and implemented while the agency conducts the assessment of the parent's ability to provide day-to-day care for the child required under section 260C.219.

- Frequency of maternal visitation is significantly, positively related to the likelihood of reunification even after controlling for mother's substance abuse and mental illness. Leathers (2002)
- Children of parents who visit frequently spend significantly less time in foster care (expediting case closure) than those whose parents visited infrequently or not at all (Fansel & Shinn, 1978; Mech, 1985; Milner, 1987)

- Frequency of visitation is positively related to children's emotional and intellectual development, as well as to their overall adjustment to the transition into foster care (Cowan & Stout, 1939; Fanshel & Shinn, 1978; Weinstein, 1960; Zimmerman, 1982)

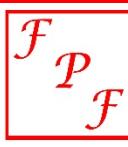
- Increased parental visitation is associated with a decrease in behavioral problems among children in foster care (Cantos, Gries, & Slis, 1997; McWey, Acock, & Porter, 2010; Simsek, Erol, Oztop, & Munir, 2007)
- Children of parents who visited frequently had significantly lower levels of depression than their counterparts. McWey, et al.

# ENSURING VISITATION



- Discuss visitation with county social worker outside of court
- Often more efficient than litigating the issue
- Always weigh pros and cons of bringing a motion
- May be divisive and have long term impact on case
- Bring motion when necessary

# ENSURING VISITATION



- Minn. R. Juv. Prot. Proc. 15
- Subd. 2. Motions to Be in Writing.
- Except as permitted by subdivision 3, a motion shall be in writing...
- Subd. 3. Exception.
- Unless another party or the county attorney objects, a party or the county attorney may make an oral motion during a hearing...  
When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

# ENSURING VISITATION



- Be persistent
  - It may take several hearings to achieve desired change in visitation

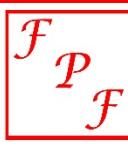
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# REQUESTING ADDITIONAL SERVICES



- Significant gaps in services may ultimately sabotage reunification
  - Transportation
  - Housing
  - Phone
  - Trauma services
  - ARMHS worker
  - Parent mentor
  - Family therapy
  - Support groups

# REQUESTING ADDITIONAL SERVICES



- Anything that may help to address a significant issue/barrier to reunification
- A drug addict will likely never achieve reunification without addressing “Chemical Dependency” issue
- Discuss with case worker
  - Bring motion or address at next review hearing
  - Judge may order requested services, if she/he believes that they would help reunify the family
  - Good to bring to judge’s attention even if county is in support of requested service

- Ensure the services recommended in Case Plan are applicable/appropriate/realistic for you.
- CHEMICAL HEALTH ISSUES?
  - UA'S
  - Evaluation / Re-evaluation?
  - Treatment program (outpatient vs. inpatient)
  - Aftercare
  - Additional services (AA/NA/Sponsor/Classes)

## ASSESSMENTS

- Psychological Assessments
  - Diagnostic Assessment vs. Psychological Evaluation
- Psychiatric Assessments
  - Medications needed?
  - Review how often?
- Counseling Services
  - Individual / couples / group
  - Day treatment
  - DBT / EMDR / PTSD / cognitive / parenting

# PERMANENCY PROGRESS REVIEW HEARINGS



- At the hearing the Court must review:
  - Progress of the case, the parent's progress on the case plan or OHP plan (whichever applies);
  - The agency's reasonable (ICWA cases –active) efforts for reunification and provision of services;
  - The agency's efforts to finalize the permanent plan for the child (§260C.212(e) and to make a placement in a home that will commit to being the legally permanent home if no reunification.
  - In the case of an Indian child, active efforts to prevent the breakup of the Indian family and to place under United States Code, title 25, chapter 21, §1915.

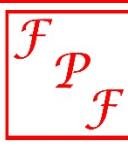
# PERMANENCY PROGRESS REVIEW HEARINGS



- Notice to Relatives required to anyone who responded to the Agency's prior notices and asked to be notified of planning for the child, court proceedings

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# PERMANENCY PROGRESS REVIEW HEARINGS



- IF at the hearing the Court finds:
- The parent/guardian is in compliance with the court ordered OHP plan **AND**
- The parent/guardian has maintained contact with the child –**THEN**
- The court may either;
- Return the child home if conditions leading to OHP have been sufficiently mitigated so home is safe and return home is in best interests **OR**
- Continue the case **UP TO** six more months. If the child is not returned home at the end of the additional six months the court must proceed to permanency proceedings.

# PERMANENCY PROGRESS REVIEW HEARINGS



- If the court determines the parent is not in compliance with the OHP plan **OR**
- Not maintaining regular contact with the child as outlined in a visitation plan made part of the OHP plan the court may order the agency to:
  - Develop a permanent placement plan;
  - Consider, identify, recruit and support one or more permanency resources;
  - File a permanency petition

# PERMANENCY PROCEEDINGS ADMIT / DENY HEARING



- Minn. Stat. §260.507
- Shall be held within 10 days of the filing of the petition when a TPR or a transfer of physical and legal custody petition has been filed
- The court shall determine whether there is a prima facie basis for finding that the agency made reasonable/active efforts for reunification.

# PERMANENCY PROCEEDINGS ADMIT / DENY HEARING



- Minn. R. Juv. Prot. Proc. 32.02, Subd. 5(b)
- Service: The summons and petition shall be personally served upon the parents in a manner that will allow completion of service at least 10 days before the admit/deny hearing.
- Service by publication –Published notice shall be made once weekly for three weeks with the last publication at least 10 days before the admit/deny

# PERMANENCY PROCEEDINGS PRETRIAL HEARING



- At least one week prior to pretrial hearing determine:
  - Witnesses
  - Exhibits
  - Discovery requested/collected from the social worker case file/GAL/service providers
- E-File and serve prior to hearing to county:
  - Witness list
  - Exhibit list

# PERMANENCY PROCEEDINGS PRETRIAL HEARING



- At the pretrial hearing:
- Discuss with parties and court expected length of trial (Consecutive days?)
- Finalize who the county expects to call as witnesses (Often list more than are called)
- Discuss methods of testimony (In person / telephone / stipulated exhibits)
- Discuss county's expectations regarding GAL testimony (who will call the GAL/question)
  - Consider any potential settlement options, (transfer to a relative vs. TPR / contact plan to be attached to a voluntary petition)

# PERMANENCY PROCEEDINGS TRIAL MATTERS



- Minn. Stat. §260C.301 (Termination of Parental Rights)
- Voluntary vs. Involuntary
  - Presumption of palpable unfitness if involuntary
    - Burden shift and presentation of evidence at future trials
- In order to make voluntary, must make clear record that parent is admitting voluntarily and for good cause
  - (In the Matter of the Child of A.S. and A.M., Parents, 698 N.W.2d 190)
  - Petition must only cite to Minn. Stat. §260C.301, subd. 1(a)

## **Minn. Stat. §260C.503 PERMANENCY PROCEEDINGS, Subdivision 1 Required permanency proceedings.**

- ... the court shall commence proceedings to determine the permanent status of a child by holding the admit-deny hearing required under section 260C.507 not later than 12 months after the child is placed in foster care or in the care of a noncustodial or nonresident parent...

# PERMANENCY PROCEEDINGS TRIAL MATTERS



- In order to prevail, the petitioning party must demonstrate that at least one statutory ground for termination is supported by clear and convincing evidence, termination is in the best interests of the child and that the county has made reasonable efforts to reunite the family. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004); *In re Children of T.A.A.*, 702 N.W.2d at 708.

# PERMANENCY PROCEEDINGS TRIAL MATTERS



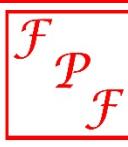
- Minn. Stat. §260C.503 PERMANENCY PROCEEDINGS, Subd. 2 Termination of parental rights
- (a) The responsible social services agency must ask the county attorney to immediately file a termination of parental rights petition when:
  - (1) ... egregious harm... ;
  - (2) ... sibling of a child who was subjected to egregious harm;
  - (3) the child is an abandoned infant... ;
  - (4) ... [prior] order involuntarily terminating the parent's rights;

# PERMANENCY PROCEEDINGS TRIAL MATTERS



- (5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2, against the child or another child of the parent;
- (6) the parent has committed an offense that requires registration as a predatory offender... ; 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...

# PERMANENCY PROCEEDINGS TRIAL MATTERS



- Minn. Stat. §260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY REUNIFICATION; REASONABLE EFFORTS
- ... Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon a determination by the court that a petition has been filed stating a *prima facie* case that:
  - (1) the parent has subjected a child to egregious harm...
  - (2) the parental rights of the parent to another child have been terminated involuntarily;

# PERMANENCY PROCEEDINGS TRIAL MATTERS



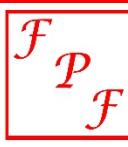
- (3) the child is an abandoned infant... ;
- (4) the parent's custodial rights to another child have been involuntarily transferred... ;
- (5) the parent has committed sexual abuse as defined in section 626.556, subdivision 2, against the child or another child of the parent;
- (6) the parent has committed an offense that requires registration as a predatory offender... ; or
- (7) the provision of services or further services for the purpose of reunification is futile...

# PERMANENCY PROCEEDINGS TRIAL MATTERS



- Minn. Stat. §260C.312 DISPOSITION; PARENTAL RIGHTS NOT TERMINATED.
- (a) If, after a hearing, the court does not terminate parental rights but determines that the child is in need of protection or services, or that the child is neglected and in foster care, the court may find the child is in need of protection or services or neglected and in foster care and may enter an order in accordance with the provisions of section 260C.201.

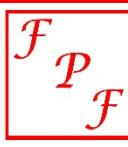
# PERMANENCY PROCEEDINGS TRIAL MATTERS



## Minn. Stat. §260C.515 (Transfer of Custody)

- Can be voluntary or involuntary
- Minn. R. Juv. Prot. Proc. 42.07 Transfer of Permanent Legal and Physical Custody to a Relative, Subd. 4. Modification of Order.
  - An order transferring permanent legal and physical custody of a child to a relative may be modified using the standards under Minnesota Statutes, sections 518.18 and 518.185... Notice of any motion to modify... shall be provided by the court administrator to the responsible social services agency which shall be a party to the proceeding...

# PERMANENCY PROCEEDINGS TRIAL MATTERS



Minn. Stat. §260C.515, subd. 4(6)

- another party to the permanency proceeding regarding the child may file a petition to transfer permanent legal and physical custody to a relative. The petition must... be filed...
  - By the A/D in a conventional case OR at least 30 days prior to trial in a fast track TPR case

## Minn. R. Juv. Prot. Proc. 39.04 Standard of Proof, Subd. 2 Termination of Parental Rights and Other Permanent Placement Matters.

- (a) Non-Indian Child.... the standard of proof is clear and convincing evidence.
- (b) Indian Child.... the standard of proof is beyond a reasonable doubt.