

Child Welfare Case Update: Session 2

Social Services Attorneys Winter Conference - 2018



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1. TPR
2. Adoption

In re J.S.K. Pleading

Underlying Neglect Action

- 2015 Petition/Adjudication
 - Untreated MH/SA
 - DV
 - Improper care
- Jan 4, 2016 cease reunification order

TPR Motion by DSS (May 20, 2016)

- Any Issues Here?

In re J.S.K. Pleading

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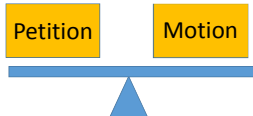
TPR **Motion** by DSS (May 20, 2016)

- Allege statutory grounds under 7B-1111(a)(1)-(3), (6)
- Oral 12(b)(6) motion to dismiss at hearing
- Denied; w/motion mom had notice from underlying file re: allegations & grounds for TPR

Notice Pleading

Facts must put party on notice of acts, omissions, conditions at issue

≠ Recitation of alleged ground



No Difference: G.S. 7B-1104(6)

ICWA, In re L.W.S.



Cherokee, Eastern Band

FATHER



New Regs Recognized by COA

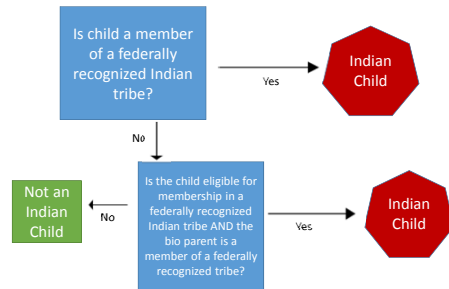
- "It seems to be the case the burden has shifted to state courts to inquire at the start of a proceeding whether the child at issue is an Indian child, and if so, the state court must confirm that the agency used due diligence to identify and work with the Tribe and treat the child as an Indian child unless and until it is determined otherwise."

25 C.F.R. 23.107
Mandatory Inquiry of all participants
Commencement of proceeding
A/N/D - TPR
Know or reason to know Indian Child
All responses on record

8a. Based on an inquiry of each participant, the Court finds that the participants
☐ do not know ☐ know ☐ have reason to know that the juvenile is an Indian Child.
☐ (if applicable) The juvenile is an Indian Child and a member or eligible for membership in the _____ tribe.
☐ (if applicable) Following the inquiry, the Court instructed each participant to notify the Court if he or she subsequently obtains information that provides reason to know that the juvenile is an Indian Child.

AOC-J-150, 151

Indian Child, 25 U.S.C. 1903(4)



Reason to Know

- Informed by participant, tribe, or agency
 - Indian child
 - Discovered information indicating Indian child
 - Child gives court reason to know
 - Domicile/residence on reservation/Alaskan village
 - Child is or was ward of Tribal court
 - Parent or child has identification card (membership)

Reason to Know

- Party seeking placement
 - Make diligent efforts to verify child's status
- Court
 - Treat as Indian child and apply ICWA
 - Until determination on record ICWA does not apply

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Abuse, Neglect, Dependency, and Termination of Parental Rights

13.2 Indian Child Welfare Act - 13-3

- A. Introduction and Purpose
- B. Applicability
 - 1. Proceedings covered by ICWA
 - 2. Proceedings not covered by ICWA
 - 3. "Indian child"
- C. Inquiry at Commencement of Every Proceeding as to "Indian Child" Status
 - 1. Reason to know child is an "Indian child"
 - 2. Burden of establishing ICWA applies
- D. Jurisdiction
 - 1. Exclusive tribal court jurisdiction
 - 2. Concurrent jurisdiction, intervention by tribe, transfer
- E. Emergency Proceedings
- F. Notice to the Tribe, Parent, Indian Custodian, and Bureau of Indian Affairs
 - 1. Right to intervene
 - 2. Voluntary proceedings
- G. Timing of Court Proceedings
- H. "Active Efforts" Required
- I. Finding of Serious Emotional or Physical Damage
- J. Placement Preferences
- K. Consent to Foster Care Placement, TPR, and Adoption including Relinquishment
- L. Impact of ICWA Violation

Incarceration – Neglect, In re M.A.W.

At time of neglect petition
COA unanimous opinion
Parenting classes
AA
Obtained GED

Inconsistent visitation
Not allow access to home
Not complete clinical Ax

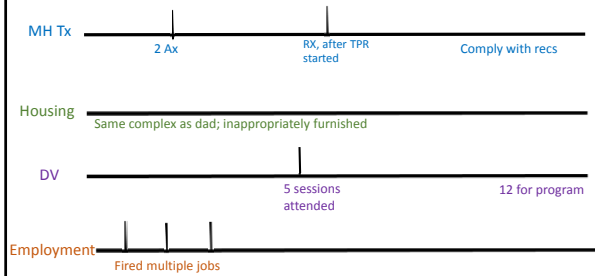
Neglect: What do you have to prove?

Past Neglect

Likelihood of Future Neglect

Evidence of Changed Circumstances

Neglect: Progress on case plan, In re M.J.S.M.



Actions by father before paternity established

Should Know

- Grasp the opportunity of notice
- In re S.D.W.

Distinguish:

- In re R.D.H., III
- Named after another man identified as possible dad
- Only relationship "casual meetings" (sexual in nature)
- Reasonable to wait for paternity results

Requirements

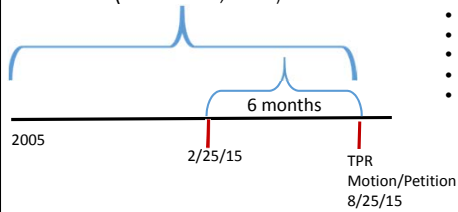


Abandonment, G.S. 7B-1111(a)(7)

In re D.E.M. (x2)

Forego All Parental Duties and Relinquish All Parental Claims
Intention: Purpose & Deliberation
Question of Fact

D.E.M. (Rutherford, 2017)



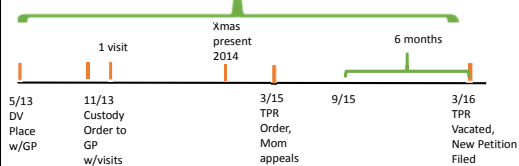
Findings:

- Never provide \$ support
- No contact in many yrs
- Pre-petition, 1 letter
- Post-petition, sev. ltrs
- Most child's life, prison
- When not, no contact other than incidental

Are these findings sufficient?

Abandonment, G.S. 7B-1111(a)(7)

D.E.M., (Wilkes, 2017)



Is it Willful Abandonment?

Best Interests: Likelihood of adoption of juvenile

Petitioners Express Interest

Ability to Adopt

- Standing Issue
- 48-3-301: Placement
- May be waived

2. Adoption

In re lvey
consent
revocation
timing

←
From receipt of
original or copy
