

Understanding Dependency Cases in Family Court

By: Judge Margaret Pickard and Judge David Gibson

Juvenile Dependency, also known as “child welfare” or “child abuse and neglect,” is one of seven areas of practice of the Eighth Judicial District Court’s Family Division. Six District Court Judges are assigned to hear dependency cases. On average, there are 3,000 children in foster care each year, with even more children who are in the custody of the Department of Family Services (DFS) and placed with extended family or fictive kin (people who the children were familiar with before coming into care with DFS).

How a Dependency Proceeding Begins

The Department of Family Services (DFS), through Child Protective Services (CPS), becomes involved with a family when a report of abuse or neglect is received. Initial child welfare reports are generally made by law enforcement, school counselors, daycare providers, family members or through anonymous reports to the CPS Hotline at (702) 399-0081. Common circumstances that cause a report to be made include on-going domestic violence (between parents, caregivers, or other household members), homelessness and/or a lack of resources (food, clothing and shelter), injuries to a child of a non-accidental nature (unusual or excessive bruising, burns or broken bones), untreated medical needs of a child (untreated diabetes, severe depression/suicidal ideations), sexual abuse by a parent or others, inability or unwillingness of a parent to provide for the child due to a parent’s mental health issues, developmental disability or substance use, absence of an available parent/caregiver as the result of a parent’s incarceration/institutionalization, or a parent’s unwillingness to care for a child.¹

Once CPS receives a report, an investigation begins into the family’s circumstances. The CPS investigator reviews the family’s history with DFS, the parents’ criminal history, and any other relevant information. Initially, CPS will determine if a child can remain at home with an in-home safety plan. An in-home safety plan may include in-home service providers who provide Basic Skills Training (BST), psychosocial rehabilitation (PSR), therapy, or observe/assist parents who may struggle with mental health, substance abuse, or developmental delays. In the event that CPS determines that it is not safe for the child to remain at home, the child will be brought into protective custody with the Department of Family Services.

¹ Pursuant to NRS 432B.330, “abuse” means:

- (1) Physical or mental injury of a nonaccidental nature; or
- (2) Sexual abuse or sexual exploitation,
of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.

“Neglect” means abandonment or failure to:

- (1) Provide for the needs of a child set forth in paragraph (b) of subsection 2; or
- (2) Provide proper care, control and supervision of a child as necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

If a child is removed from his/her parent/caregiver, CPS will first attempt to place the child with an out-of-home parent who is deemed to be safe (the “non-offending parent”), an extended family member, or fictive kin (someone known to the child). As a last resort, a child will be placed in a foster home or, if a foster home is not yet available, at Child Haven, a congregate care housing facility located just north of the Family Court.

Preliminary Protective Hearing (PPH)

Purpose: 72-Hour Review + Appointment of Counsel + Set Adjudicatory Hearing

Within 72 hours of a child being removed by CPS from his or her caregivers, a preliminary protective hearing is held by the Court.² Upon reviewing the information in the Preliminary Protective Hearing Report, filed by CPS, the Court must determine if there is reasonable cause to believe that it is “contrary to the welfare of the child to reside in his or her home” or “in the best interests of the child to place the child outside of his or her home” and determine whether reasonable efforts have been made by DFS to prevent the removal of the child from the home.³ At the PPH hearing, also called a Protective Custody (PC) hearing, the Judge explains to the parents that the court is not a criminal court, but rather, a civil court, created to ensure the safety of children.

The initial goal of the Court is to have DFS assist the parents with services to create a safe home so the child can be returned to their care. The Court will notify the parents that they are entitled to be represented by an attorney throughout the proceedings and that the Court will appoint each parent an attorney if s/he cannot afford one. If a parent is incarcerated or housed at a mental health facility, the Court will appoint that parent an attorney regardless of financial eligibility. The child will also be appointed an attorney through the Children’s Attorney Project (“CAP”); CAP will generally request that the child be appointed an Educational Advocate and/or a PLR (Person Legally Responsible), if a child has a prescription for psychotropic medications.

The Court will then set the date by which the State must file the Petition for Abuse/Neglect, which must be within 10 days of the PPH, as well as the Adjudicatory/Plea Hearing, which must be held within 30 days of the filing of the Petition.⁴

Adjudicatory Hearing

Purpose: Parents enter a Plea or Denial to the Allegations in the Petition

At an adjudicatory hearing, the parent, legal guardian, or other adult regularly found in the home and responsible for the care of the child, can enter a plea, admitting, pleading no contest, or denying the

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³ If the child is of Native American descent, the Court must find that active efforts were made to prevent removal of the child. These cases are then referred to as ICWA cases, Indian Child Welfare Act.

⁴ See NRS 432B.470 and NRS 432B.530.

allegations of the Petition for Abuse/Neglect. If a denial is entered, the matter is set for an adjudicatory trial.⁵

Once the parent or caregiver enters a plea, or an evidentiary hearing is held, the court determines whether the State has demonstrated the allegations of the Petition by a preponderance of the evidence. If the court finds that the State has satisfied this burden, the Court will sustain the Petition for Abuse/Neglect and set a Dispositional Hearing within 15 working days.⁶ During this time, a DFS Specialist will work with the parent to create a Case Plan, a list of services the parent will engage in to address the safety issues that brought the child into care.

Dispositional Hearing

Purpose: Review Parents' Case Plan + Establish Wardship of the Child + Set Review Hearing

The purpose of a Dispositional Hearing is to allow the parent/guardian to work with DFS to create a Case Plan. A Case Plan is a list of services that the parent/legal guardian should participate in to make the behavioral changes necessary to create a safe home environment so that the child can return to the home. Case Plan services generally include substance abuse treatment, mental health counseling, domestic violence counseling, family and/or individual counseling, and/or parenting classes.

Prior to the Dispositional Hearing, the parent/guardian will review the Case Plan with his/her attorney. Once the Case Plan is approved by counsel, the Court will adopt the Case Plan, place the child under the jurisdiction of the Court (this is known as “taking wardship of the child”), and set a Review Hearing in six months.

Review Hearing

Purpose: 6-month Review of Parents' Progress and Children's Well-Being + Permanency Goal

Every 6 months, the Court is required to review the progress of the parents on their respective Case Plans, the well-being of the child (including placement, school progress and records), and establish the Court's permanency goal for placement of the child. These hearings are known as “Review Hearings” at the six-month mark and “Permanency Planning Hearings” at the one-year mark.

In addition to reviewing the progress of the parents and the well-being of the child, the Court will determine if a child can return home, if it is necessary to maintain wardship of the child, and whether DFS has made reasonable efforts towards the Court's permanency plan goal during the last 6-month period. At each 6-month hearing, the Court will set forth the Court's permanency goal for the next review period. The Court can establish any of the following permanency goals and often adopts concurrent goals: Reunification, Guardianship, Termination of Parental Rights/Adoption, Other/Alternative Planned Permanent Living Arrangements (OPPLA/APPLA) (for children 16 and over).⁷

⁵ If an adjudicatory trial is set, it is important to counsel to be aware of the provisions of NRS 432B.530. Specifically, NRS 432B.530(3) provides that in an adjudicatory hearing, “all relevant and material evidence helpful in determining the questions presented” may be considered by the Court.

⁶ See NRS 432B.530.

⁷ In the event the State files a Motion to Terminate the Rights of the Parents, the Court may conduct an evidentiary hearing to determine if (1) termination of parental rights is in the best interests of the child and (2) parental fault exists. See NRS 128.105 and *In the Matter of Termination of Parental Rights as to N.J.*, 116 Nev. 790 (2000).

Review hearings are crucial for the parents, children, and the Court, and often serve as a catalyst for parents to begin making changes shortly before the hearing, knowing that they will stand accountable before the Court on their progress. Review hearings are also important for the children. The Court anticipates that CAP attorneys will speak to their clients shortly before the review hearings in order to provide the Court with an update about the children, including their position on where they are placed, school progress, as well as their wishes regarding permanent placement, including whether or not they would like to return to the care of their parents.

Termination of Parental Rights' Hearing

Purpose: Find Permanency Through Adoption of the Children

If parents do not make necessary changes to provide a safe home environment for their children, the State may file a Motion to Terminate the Parental Rights of the parents under NRS 128. The Nevada Supreme Court has consistently recognized that terminating the parent-child relationship is an “extreme measure and an exercise of awesome power ... implicat[ing] fundamental liberty interests of a parent’s relationship with his or her child.” *In re Parental Rights as to A.G.*, 295 P.3d 589, 594 (Nevada 2013); *Parental Rights of J.L.N.*, 55 P.3d 955, 958 (2002); *Matter of Parental Rights as to N.J.*, 8 P.3d 126, 129 (Nevada 2000).

Parents have a fundamental liberty interest in the care, custody, and control of their children. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000). It is presumed that fit parents act in the best interest of their children. *Id.* As long as parents adequately care for their children, there is ordinarily “no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.” *Id.* at 68–69, 120 S.Ct. 2054. These substantive due process rights prohibit the government from depriving parents of the custody of their children without a finding of parental unfitness. *Stanley v. Illinois*, 405 U.S. 645 (1972) (holding that parents are constitutionally entitled to a hearing on parental fitness before children are removed from their custody).

In a termination of parental rights proceeding, the State must establish by clear and convincing evidence that parental fault exists and that the child’s best interest would be served by termination of parental rights. NRS 128.105 and *In the Matter of Termination of Parental Rights as to N.J.*, 116 Nev. 790 (2000).

Prove Up Testimony

If a parent has abandoned the child or is not engaging in his/her Case Plan and is not attending hearings, the State can ask to “Prove Up” against a parent. In a Prove-Up hearing, the State will have a DFS Permanency Caseworker sworn in and testify regarding the respective parents’ involvement, or lack of involvement, in the Case Plan and/or visitation with the children. Based on the testimony, the Court must determine if the State has established by clear and convincing evidence that parental fault exists and that the child’s best interest would be served by termination of parental rights. NRS 128.105 and *In the Matter of Termination of Parental Rights as to N.J.*, 116 Nev. 790 (2000).

Relinquishment

Generally, once the State files a Motion for Termination of Parental Rights, parents’ counsel will ask for a Mediation to discuss whether an agreement can be reached for a parent to relinquish his/her parental rights and have an Open Adoption Agreement to allow the parent continuing

contact with the child. Contact is typically an annual update regarding the child, with a picture of the child. It is far more common for parents to agree to relinquish their parental rights rather than for the Court to hold a Termination of Parental Rights trial.

Family Court judges play an important role in protecting children from child abuse and neglect, while also balancing the parents' constitutional rights.