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## **TEN MICHIGAN CASES WE ALL SHOULD KNOW**

### **In re Rood, 483 Mich. 73 (2009) (Reasonable efforts, notice)**

- ◆ Procedures to ensure due process to a parent include DHS policies/procedures (93, concur at 125)
- ◆ Reasonable efforts required by 712A.19a(2) unless aggravated circumstances (99-100, 118, concur at 123, 127)
- ◆ Failure to make reasonable efforts is defense against TPR (113-15, concur at 123, 125, 127)
  - ◆ Creates “hole in the evidence” (127)
- ◆ Notice of nature & import of proceedings and fair opportunity to participate are required (113-14, 115, concur at 125)

## **In re Mason, 486 Mich. 142 (2010) (Incarcerated parent)**

- ♦ Must engage incarcerated parent. Can't ignore. Reasonable efforts required (152)
- ♦ Telephone participation in all proceedings, adequate notice (152-53)
- ♦ Right to participate in service plan (159)
- ♦ Can't exclude parent, then terminate rights based on missing info due to lack of participation (159-60, see *Rood* at 119, 127).
- ♦ Mere incarceration is not grounds for TPR. Three conditions must be met under 19b(3)(h) (160-61)
- ♦ DHS can't use unsupported opinion that it will take a certain amount of time for the parent to become fit after release. Too speculative (162)
- ♦ Requirements under (3)(h) encompass those in (c)(i) and (g) (165)
- ♦ Criminal history not sufficient for TPR under (j) (165)

## **In re Beck, \_\_ Mich. \_\_ (2010) (Child Support after TPR)**

- ♦ Parental rights defined in MCL 722.1-722.2.
  - ♦ Parental rights do not include parental obligations.
- ♦ Parental obligations defined in MCL 722.3.
  - ♦ Obligation to provide child with support unless court terminates the obligation.
  - ♦ Can be enforced even if neither parent has custody of child.
- ♦ Obligations separate from rights. TPR only terminates rights. Court *may* terminate obligations.

## **In re LeFlure, 48 Mich. App. 377 (1973) (Anticipatory neglect)**

- ◆ Anticipatory neglect: how a parent treats one child is probative of how that parent may treat other children (392)
- ◆ Liberty interest in custody of child (385)
- ◆ Clear and convincing evidence required for TPR (386)
- ◆ Continuous record, evidence considered in all subsequent hearings (391)

## **In re JK, 468 Mich. 202 (2003) (Compliance with PAA)**

- ◆ Compliance with parent-agency agreement is evidence of ability to provide proper care and custody (214)
  - ◆ PAA is presumed adequate to remedy problems.
- ◆ Parent has due process right to companionship, care, and custody of the child (210)
- ◆ Adoption cannot be finalized until COA and S.Ct. affirm TPR order if appealed (216-17, 219)

## **In re Terry, 240 Mich. App. 14 (2000) (Disabled parents, ADA)**

- ◆ ADA does not provide a direct defense to termination (25)
- ◆ ADA does require that services reasonably accommodate parent's disability (25)
- ◆ If services don't reasonably accommodate, then reasonable efforts cannot be found (26)
- ◆ Must raise need for accommodation/claim of ADA violation, in timely manner (ASAP) (26)
- ◆ Reasonable accommodations stop somewhere short of full-time, live-in assistance (27-28)
  - ◆ Parent must be able to meet minimum parental responsibilities.

## **In re AP, 283 Mich. App. 574 (2009) (Custody proceedings)**

- ◆ Juvenile court orders supersede any existing custody orders (593)
- ◆ When juvenile proceedings end, custody orders spring back into force (594)
- ◆ Juvenile court judge can decide custody matters if motion brought (595, 598-99)
  - ◆ All part of family court. One family, one judge.
  - ◆ Must follow all procedures, including best interest analysis, burden analysis, custody case name and number.
- ◆ Child has due process interest in family life, right to support, education, care (591)

## **In re JL, 483 Mich. 300 (2009) (ICWA)**

- ♦ “Active efforts” requirement: affirmative, more proactive, not passive, efforts. More than “reasonable efforts” (321)
- ♦ Need not be current efforts. But can’t be in distant past. Must be relevant to current circumstances (324-25)
  - Determine by reference to grounds for TPR and relevance to parent’s current situation (325)
- ♦ Need not be efforts in relation to child at center of present proceeding. But efforts must permit current assessment of fitness (325)
- ♦ Declined to adopt futility test for ICWA cases (326-27)
- ♦ In *JL*, prior services found to be extensive, relatively recent, and tailored to meet parent’s specific needs (330)

## **In re CR, 250 Mich. App. 185 (2002) (Jurisdiction over child)**

- ♦ One parent’s plea is sufficient for jurisdiction; orders may be made against any adult (202-03)
- ♦ Jurisdiction tied to child. TPR can ensue against a parent who hasn’t participated in protective proceedings (205)
- ♦ Need legally admissible evidence for TPR if parent wasn’t subject to adjudication (205-06)
- ♦ In *CR*, father did participate in several hearings, had counsel, had notice of allegations against him (208-09)
- ♦ Right to counsel = right to effective assistance (197-98)

## **In re Brock, 442 Mich. 101 (1993) (Confrontation/X-exam)**

- ◆ Sixth Amendment right of confrontation does not apply in child protection cases (108)
- ◆ Right to cross-examine child may be curtailed if judge finds it necessary to do so (115)
- ◆ Alternative modes of testimony (e.g., video dep) may be used, including questioning by neutral examiner outside of presence of parents and their counsel (115)
- ◆ Also found that MCL 722.631 abrogates confidentiality in child welfare cases.