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**CLS Mason Presentation Notes**

**Cases Leading Up To Mason**

In re Rood, 483 Mich 73, 119; 763 NW2d 587 (2009)

In re McBride, 483 Mich 1095; 766 NW2d 857 (2009) (leave denied) (Justice Corrigan's Dissent)

In re Hansen, 486 Mich 1037; 783 NW2d 1244 (2010)

**In re Mason, 486 Mich 142; 782 NW2d 747 (2010)**

Basic Facts

BF incarcerated at the time the petition is filed (June 20, 2007). Earliest release date is July 1, 2009 (drunk driving/larceny charges). Not included in at least 5 review hearings. DHS worker never contacted the father. Did not involve him in the development of the case service plan. Child living with paternal uncle and aunt during the case. DHS filed a TPR petition. L-GAL opposed petition. Trial court granted the petition under MCL 712A.19b(3)(c)(i),(g),(h),(j). COA affirmed. Supreme Court reversed.

Key language/Holding

- “The state is not relieved of its duties to engage an absent parent merely because the parent is incarcerated.”
- Reasonable efforts to reunify the child and family must be made in all cases except those involving aggravating circumstances.
- To comply with MCR 2.004, the moving party and the court must offer the incarcerated parent the opportunity to participate in each proceeding in a child protective action. The court is precluded from granting relief without this invitation to participate.
- Must engage incarcerated parent in the development of the service plan.
- Must permit visits unless harmful to the child (fn.13)
- Must meet all three conditions of MCL 712A.19b(3)(h) to terminate an incarcerated parent's rights.
  - 2 years from the time the TPR petition is filed
  - Placement with relatives can constitute “proper care and custody.”
  - Can't assess “reasonable expectation” to provide “proper care and custody” w/o participation in service plan. “Hole in the evidence”
- “Criminal history alone does not justify termination. . . “[T]ermination solely because of a parent's past violence or crime is justified only under certain enumerated circumstances.”

## **Post-Mason Reversals**

- In re Hudson, unpublished decision per curiam of the Court of Appeals, Docket Nos. 296685, 296793 (decided on September 23, 2010)
- In re Manciel, unpublished decision per curiam of the Court Appeals, Docket No. 296359 (decided on August 2, 2010)
- In re Rose, unpublished decision per curiam of the Court of Appeals, Docket No. 295948 (decided on July 22, 2010)
- In re Nordberg, unpublished decision per curiam of the Court of Appeals, Docket No. 295233 (decided on July 20, 2010)
- In re Holmes, unpublished decision per curiam of the Court of Appeals, Docket No. 295427 (decided on July 17, 2010)
- In re Jones, unpublished decision per curiam of the Court of Appeals, Docket Nos. 295827, 295932 (decided on July 15, 2010)
- In re Kleyla, unpublished decision per curiam of the Court of Appeals, Docket No. 294776 (decided on July 15, 2010)
- In re Medley, unpublished decision per curiam of the Court of Appeals, Docket No. 294001 (decided on July 1, 2010)
- In re Lopez, unpublished decision per curiam of the Court of Appeals, Docket No. 296506 (decided on June 22, 2010)

## **Common Themes In Reversals**

- failure to contact incarcerated parent.
- failure to include incarcerated parent in the service plan/offer him services.
- failure work with the Dep't of Corrections (even out of state agencies) to determine what services are available.
- failure to have incarcerated parent present at court hearings.

## **New Dep't Policy (L-10-117-CW)**

- must ensure that the incarcerated parent has the opportunity to participate via telephone at every hearing.
- must ensure that the incarcerated parent has an opportunity to participate in the development of a case service plan that addresses that incarcerated parent's identified needs and is evaluated on the basis of his or her compliance with and benefit from that plan. Must inquire about services available at the correctional facility.
- must arrange parenting time unless harmful to the child.
- must not rely solely on a parent's incarceration to establish grounds to terminate his or her parental rights.
- must ensure participation by telephone in certain permanency planning conferences

## **Open Questions/What's Next**

- What if the case service plan cannot be implemented because of the failure of the Department of Corrections to offer services? What if an out of state prison does not allow the prisoner to participate in the hearing via phone? How will the “hole in the evidence” be remedied?
- Is the Dep’t precluded from seeking termination at the initial disposition in cases where the Dep’t must make reasonable efforts because aggravated circumstances are not present?
- Is there a futility exception to the general requirement that reasonable efforts must be made in all cases in which aggravated circumstances do not apply? Can the mandate to provide reasonable efforts be deemed to be unreasonable?

## **Next on the Court's Docket**

- In re Beck (post-TPR child support order)
- In re P.M (jurisdiction reversal)
- In re Watkins (judicial review of MCI decision-making)