

Finding Defenses to TPR Cases

They Do Exist.
Don't Let Anyone Tell You
Otherwise.

September 12, 2013

The Grounds for TPR

Wis. Stat. § 48.415

1. Abandonment

1m. Relinquishment

2. Continuing CHIPS

3. Continuing Parental Disability

4. Continuing Denial of Periods of Physical Placement

5. Child Abuse

6. Failure to Assume Parental Responsibility

7. Incestuous Parenthood

8. Homicide of Solicitation to Commit Homicide of Parent

9. Parenthood as a Result of Sexual Assault

9m. Commission of a Felony Against a Child

10. Prior Involuntary Termination of Parental Rights to Another Child

Where to begin looking for defenses?

- Review the jury instructions for the ground(s) alleged.
- Find Places to Attack the State/County's Case.
- Share the jury instructions with your client.

The instructions will help your client understand what the DA or CC needs to prove and your client may be able to help identify areas to attack from them.

Abandonment

■ SPECIAL VERDICT

1. Was (child) placed, or continued in a placement, outside the (parent)'s home pursuant to a court order which contained the termination of parental rights notice required by law?

Answer: Yes or No

2. Did (parent) fail to visit or communicate with (child) for a period of three months or longer?

Answer: Yes or No

3. Did (parent) have good cause for having failed to visit with (child) during that period?

Answer: Yes or No

4. Did (parent) have good cause for having failed to communicate with (child) during that period?

Answer: Yes or No

5. Did (parent) communicate about (child) with [()] who had physical custody of (child)/(agency) during that period?

Answer: Yes or No

6. Did (parent) have good cause for having failed to communicate about (child) with [()] who had physical custody of (child)/(agency) during that period?

Answer: Yes or No

Petitioner's Burden

- Was (child) placed, or continued in a placement, outside the (parent)'s home pursuant to a court order which contained the termination of parental rights notice required by law?
- Did (parent) fail to visit or communicate with (child) for a period of three months or longer?

Abandonment Question #1

Was (child) placed, or continued in a placement, outside the (parent)'s home pursuant to a court order which contained the termination of parental rights notice required by law?

Abandonment Question #2

Did (parent) fail to visit or communicate with (child) for a period of three months or longer?

Burden Shifts if Yes is the Answer to #1 and #2

- Parent has burden to establish good cause by greater weight of the credible evidence, to a reasonable certainty.
- Or Parent can establish that he or she communicated about the child with the child's caregiver (one with physical custody).

Abandonment Question #3

Did (parent) have good cause for having failed to visit with (child) during that period?

Abandonment Question #4

Did (parent) have good cause for having failed to communicate with (child) during that period?

Abandonment Question #5

Did (parent) communicate about (child) with [()] who had physical custody of (child)/(agency) during that period?

Abandonment Question #6

Did (parent) have good cause for having failed to communicate about (child) with [() who had physical custody of (child)/(agency)] during that period?

Failure To Assume Parental Responsibility

- Has (parent) failed to assume parental responsibility for (child)?

To establish a failure to assume parental responsibility, (petitioner) must prove by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that the parent or the (person) (or) (persons) who may be the parent of (child) (has) (have) not had a substantial parental relationship with (child.)

Substantial Parental Relationship

- the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of (child).

- “Totality of the circumstances” analysis

“We conclude that Wis. Stat. § 48.415(6) (2007-08) prescribes a totality-of-the-circumstances test. When applying this test, the fact-finder should consider any support or care, or lack thereof, the parent provided the child throughout the child's entire life. This analysis may include the reasons why a parent was not caring for or supporting her child and exposure of the child to a hazardous living environment.”

Tammy W-G. v. Jacob T., 2011 WI 30, 333 Wis.2d 273, 797 N. W.2d 854

In the Case of Some Dads...

- Additional Question:

Did (parent) know or have reason to believe that he was (child)'s father?

Continuing CHIPS

- 1. Has Jay'Den been adjudged to be in need of protection or services and placed outside the home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law?
- 2. Did the Anytown County Department of Social Services make a reasonable effort to provide the services ordered by the court?
- 3. Has Tanya Hess failed to meet the conditions established for the safe return of Jay'Den to Tanya's home?
- 4. Is there a substantial likelihood that Tanya Hess will not meet these conditions within the nine-month period following the conclusion of this hearing?

Continuing CHIPS Question #1

Has Jay'Den been adjudged to be in need of protection or services and placed outside the home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law?

Continuing CHIPS Question #2

Did the Anytown County Department of Social Services make a reasonable effort to provide the services ordered by the court?

Services To Be Provided by DHS

- Services to target behavioral change
 - AODA assessment, AODA treatment, Random Urine Analysis, Community AODA supports, Individual Mental Health Therapy, Psychiatric Evaluation, Medication Evaluation, Ongoing case management
- Obtain reports from service providers to monitor progress in meeting TX objectives.
- Bus Tickets
- Investigate relative placements

Continuing CHIPS Question #3

Has Tanya Hess failed to meet the conditions established for the safe return of Jay'Den to Tanya's home?

Continuing CHIPS Question #4

Is there a substantial likelihood that Tanya Hess will not meet these conditions within the nine-month period following the conclusion of this hearing?

NO INSTRUCTION IS RECOMMENDED.

■ Expect a motion for Summary Judgment

- 4. Continuing Denial of Periods of Physical Placement
- 8. Homicide of Solicitation to Commit Homicide of Parent
- 9. Parenthood as a Result of Sexual Assault
- 9m. Commission of a Felony Against a Child
- 10. Prior Involuntary Termination of Parental Rights to Another Child