

# Issue Spotting

Eileen Fredericks

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# Procedural Issues

- Venue
- Jurisdiction
- Summons
- Service of Summons
- Time limits



# Venue

- Wis. Stat. § 48.185(2)
  - Venue shall be in the county where the parent or child reside at the time the petition is filed.
  - Venue shall be in the county where the CHIPS dispositional order was issued, unless the child's county of residence has changed or the parent of the child has resided in a different county of this state for 6 months.



# Jurisdiction

Yes,  
we have  
"general"  
jurisdiction.



- **Wis. Stat. § 48.14 & 48.15**
  - **Children's court has exclusive jurisdiction & is paramount in all cases involving children.**
- **Wis Stat. § 822**
  - **Uniform Child Custody Jurisdiction Act.**
- **Wis. Stat. § 48.028, 25 U.S.C. secs. 1911-1963**
  - **Indian Child Welfare Act.**

# Contents of Summons

- **The summons shall:**
  - Contain the name & DOB of the child, and the nature, location, date and time of the initial hearing.
  - Advise the party of his or her right to legal counsel, including info about the public defender.
  - Advise the parties of the possible results of a hearing and consequences of failure to appear.
  - Advise parties of need to appeal within 30 days if rights are terminated.
    - Wis. Stat. § 48.42 (3)

# Service of Summons

## Wis. Stat. § 48.42 (4)

- Personal Service
- 7 days before the hearing
- Service is not required if party submits to jurisdiction.
- Constructive notice
  - Service by publication
  - Reasonable diligence in order to avoid personal service and justify publication is a factual inquiry.

# Time Limits

- Initial hearing within 30 days from the petition's filing.
- 1<sup>st</sup> hearing sets in motion all time limits.
- Generally, waiving time limits to trial is beneficial to our clients.



# Motions Based on the institution of the Proceedings

- **Must be filed within 10 days of the initial hearing.**
- **Types of Motions**
  - Lack of probable cause on the face of the petition
  - Insufficiency of the petition (form and content)
  - Invalidity of the statute on which the petition is based (Constitutional challenges)

# Motions under CHIPS case

- If your client is not represented by another lawyer in the CHIPS case, you can file motions in the CHIPS case as ancillary representation.
  - Revisions to the dispositional order
  - Changes of Placements
  - Motions to compel services
  - Changes to the visitation plan

How has your client reached this point?



# Where is your client now?

- **Mental Health Treatment/Medications**
- **AODA Treatment/Recovery**
- **New influences (significant other, relative, other children, mentor)**
- **Education/School (Including parenting classes)**
- **Employment**
- **Housing**
- **Pending Criminal Cases**
- **Serious life events (recent deaths, illness, other losses)**

# 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 in looking for Defenses based on Factual issues?

- Know what specific ground(s) has been alleged.
- Get the jury instructions for that ground or those grounds.
- Review the jury instructions with your client. They are written for lay people. Ask your client to help identify areas to attack.

# Continuing CHIPS Special Verdict

- 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 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?

# Reasonable Efforts

“Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide those services, taking into consideration the characteristics of the parent or child, and other relevant circumstances of the case.



# Odds and Ends

- **Paternity issues**
- **Summary Judgment**
- **Competency**