

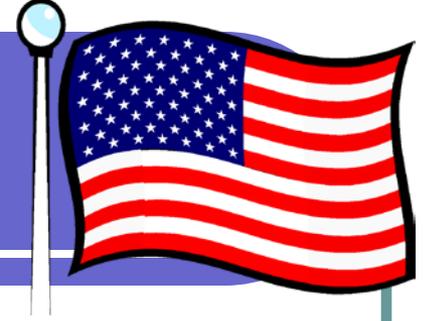
HOW TO TALK TPR and other important things about Chapter 48

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Why We do TPRs: This is 'Merica, after all.



- The **fundamental liberty interest** of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state ... When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” SANTOSKY v. KRAMER, 455 U.S. 745, 752-754 (1982).
- Congress: “Removal of a child from the parents is a penalty as great, if not greater, than a criminal penalty.” H.R. Rep. No. 95-1386, pg.22 (1975)
- Severing the parent-child relationship in a TPR is “tantamount to imposition of a civil death penalty.” Matter of Parental Rights to K.D.L and S.P.K., 58 P.3d 181 (2002).

Chapter 48.40: Definition of Termination of Parental Rights:

all the rights, powers, privileges, immunities, duties and obligations existing between a parent and a child are permanently severed

Some Common Words and Phrases (not found in adult criminal world 😊)

- TPR
 - Termination of Parental Rights
- Document that kicks off the proceedings (complaint)
 - Petition
- Temporary Physical Custody (like a bond hearing—deciding temporary placement of a child),
 - TPC also called a detention hearing
- how parents plead guilty
 - Admission
- how parents plead not guilty
 - Denial
- finding of grounds
 - Adjudication
- Sentence (or consequences)
 - Disposition
- PSI (drafted by the Department)
 - Pre-Dispositional Report/ Social Study
- Social Services and Social Workers
 - Department/ Bureau
- Burden
 - Clear and Convincing
- How many jurors have to agree on each question?
 - 2/3
- Bifurcated Trial Process (2 steps)
 - Grounds phase (can be to a jury or to the Judge). Fact-finder decides if the alleged grounds have been proven by clear and convincing evidence .
 - Disposition- Judge determines if it is in the child's best-interest for the rights to be terminated
- Time-frame to file your notice of intent to appeal
 - 30 days

On What Grounds....

- **Different Grounds mean different Issues**

- 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



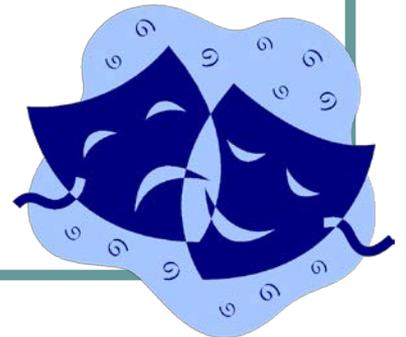
Know Thy Enemy

- DA's office
- Contract Attorneys for Petitioner
- Corp Counsel
- Private
- Pro-Se



Play to your Audience

- What works in front of one Judge may not work in front of the next one.
- Talk to your mom, your best-friend's grandma, your college roommate and your administrative assistant (without using names or giving away anything confidential, of course). Run your arguments by your potential jury.



Important Cases to Know (and Even Read)

- *Steven v. Kelley H.* 2004 WI 47: partial summary judgment may be granted in the unfitness phase of a termination
- *Kenosha County Department of Human Services v. Jodie W.* 2006 WI 93: Incarceration alone not a basis to terminate parental rights in a continuing CHIPS case.
- *State v. Bobby G.* 2007 WI 77: Court must consider biological father's efforts undertaken after he discovers he is the father in failure to assume parental responsibility
- *State V. Quinsanna D.* 2002 WI App 318: A parent's criminal offenses and sentences were relevant to whether she had failed to assume parental responsibility.
- *Santosky v. Kramer*, 455 U.S. 745(1982): Absent a finding of unfitness, it is presumed that children are best served by remaining with their natural parents.



Keep Reading...



- *Stanley v. Illinois, 405 U.S 645,(1972)*: The United States Supreme Court has recognized a parent's fundamental right to the care and custody of his or her child, and concluded that a state may not terminate this right without an individualized determination that the parent is unfit.
- *Sheboygan County D.H.H.S. v. Julie A.B., 2002 WI 95*: A parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection.

Visitation during TPR: 48.42(1m)

- Prohibition to visitation or contact may be filed with TPR petition
- Court may issue temporary order ex parte but hearing may be had for injunction
- Prohibition must be in best interest of the child



A Note on Venue

County of residence of birth parent or child at the time the petition is filed. Wis. Stat. 48.185



Summons: 48.42(2)



- Parent
- Declaration of parental interest
- Alleged father
- Familial relationship and may be the father
- GAL/Indian custodian of child
- Child if 12 years or older

Notice 48.42(2g)

- Foster parent/physical custodian
- Indian child's parent/Indian custodian/Tribe
- Notice not required to a parent as a result of sexual assault(no standing)
- Parent of nonmarital child

Motion to Sever

- Your parent has a bad case and wants other parent to at least have a shot.
- Mom has restraining order against dad.
- Your client is victim of other parent.
- Other parent has multiple children being TPR'd, but that aren't all your client's children as well.
- Any ideas???

Hearing: 48.422

- Initial must be held within 30 days of filing the petition
- Factfinding hearing within 45 days if the petition is contested
- Right to jury trial but must be made before the end of the initial hearing
- Right to substitute judge



Factfinding hearing: 48.424

- Closed to public
- Jury decides only if grounds exist
- Court finds parent unfit



Standards and factors 48.426

- Best interest of the child the prevailing factor
- (3) factors
- Likelihood of adoption after termination
- Age and health of the child
- Substantial relationships with parent or other family members
- Wishes of the child
- Duration of separation
- Whether child will enter into a more stable/permanent familial relationship

Dispositions: 48.427

- Dismiss petition
- Order termination rights to one or both parents



Voluntary termination of parental rights: 48.41

See website for questions and
affadivits to file

Cleaning up after the fact: attacking the underlying CHIPS case.

- You are not the lawyer for the CHIPS case, but do not let that stop you from using the CHIPS case to help in the TPR. (note: if your client is represented in the CHIPS case, you must work through/with that attorney to revise or change anything in the CHIPS case.)
- File a motion to compel case managers to continue providing court ordered dispositional services: visitation, AODA treatment, counseling, etc. Wis. Stat. 48.069
 - Benefits: potentially expose lack of reasonable efforts and hopefully, obtain additional support for client.
- Revise the CHIPS Dispo. Order Wis. Stat. 48.363
 - Many conditions of return are boilerplate. This does not mean that they are appropriate, possible, and/or measurable.
 - The cleanest place to address these problems is in the CHIPS case.
 - Also consider asking the court to revise the services the department is ordered to provide.
- Consider a Change in Placement Hearing- Wis. Stat. 48.357: If parent(s) are doing what they are supposed to be doing, why can't kid go home?

It's called "practicing law" for a reason.

- Keep updated on the case law—TPRs are an appellate hot bed.
- Just because you can, doesn't mean you should.
- Licensed to Plagiarize.
- Talk to other attorneys. Use the practice coordinators. Ask other Judges (key is "other" judges—let's not lose our law licenses for ex parte communications).

