
We Won!

— How We Won at Disposition —

Basic Facts of the Case

Grounds alleged: Abandonment and Failure to Assume Parental Responsibility

A is 8 years old. Mom and Dad (client) were together only for about 6 months after A was born. Dad saw A off and on until A was about 2 years old. Dad had new girlfriend. Mom was jealous. Dad had criminal issues and a pending warrant. Mom brought A to Dad's family's house for Christmas. Dad showed up at Christmas celebration, and Mom called police to have Dad arrested at his family home.

Basic Facts of the Case

Continued

Mom filed for Domestic Abuse injunction while Dad was incarcerated in adjoining county, and injunction was granted. No history of domestic abuse. Mom called police on several occasions after injunction granted about violations.

After four years, DA Injunction expires, and Mom files for an extension. The Court denies the injunction.

Dad made minimal attempts to file family court paperwork. Dad no longer had contact information for Mom or A.

Basic Facts of the Case

Continued

Mom marries Step-Dad. Six months later, Mom files petition to terminate Dad's parental rights.

Dad has history of criminal convictions and drug abuse. Dad's worst conviction is for delivery of heroin, and Dad served about one year in county jail. Dad is doing well on probation. Dad also has two other children whom he has custody and placement of. Dad's other child has had rather severe medical issues that require frequent and sometimes lengthy hospitalization. When Dad was not in jail, he was very involved in care of son with medical issues.

Fact-finding: Defense and Preview for Disposition

Good cause defense presented on abandonment

Preview Disposition:

Introduce extended family members

Show mom's true colors

Explain Past

Flip Negatives into Positives (incarceration, drug use, etc.)

We lost, but.....!

F I L E D

SEP - 4 2015

CLERK OF COURTS
BROWN COUNTY, WI

Dear Honorable John Zakowski,

We came to our decision based on the facts presented, but unanimously we would all like to express our desire to see that Todd [REDACTED] be given an opportunity to reconnect with his child and demonstrate that he can be a father to A. [REDACTED]

JM
[Signature]
[Signature]

Dear Honorable John Zakowski:
We came to our decision based on the facts presented, but unanimously we would all like to express our desire to see that Todd be given an opportunity to reconnect with his child and demonstrate that he can be a father to A.

Signed:
All 12 jurors

Disposition: It's Ain't Over 'Till It's Over

Our Gameplan:

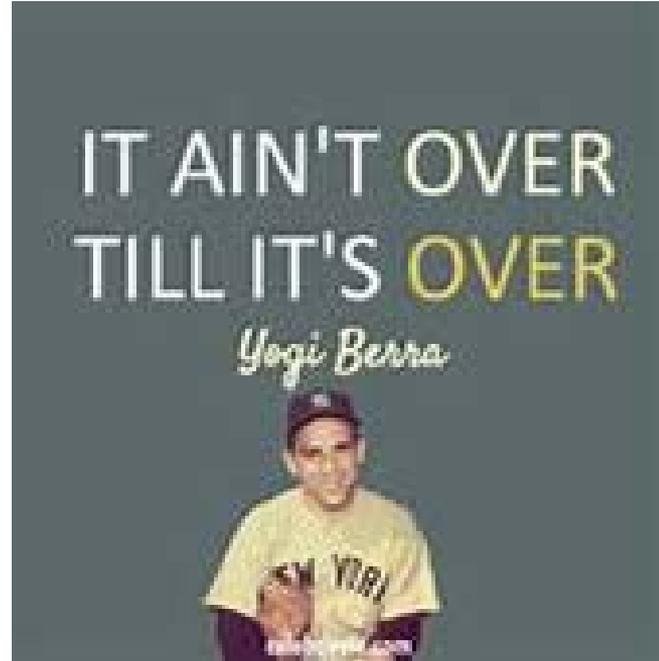
Motivated client

Experts

Witnesses

Evidence & Discovery

Educate Court on TPR Law



Motivated Client

Client did not give up hope

Willing to travel to meet with experts

Motivated family members

*What are your ideas to help clients
stay motivated post-fact finding?*

Experts

Experienced Local Social Worker (One of the Judge's favorites)

Motion to allow respected, local social worker to interview child regarding his wishes

Psychologist

Psychological examination of client to show his prognosis and that contact with him would not be harmful to child

The Court may also consider factors favorable to the parent, "including prognosis for the parent's markedly changed behavior." Sheboygan County D.H.S.S. v. Julie A.B., 2002 WI 95, ¶29, 255 Wis. 2d 170, 658 N.W.2d 402.

Witnesses

Turning their Witnesses into our own

Homestudy social worker

Use Homestudy Social Worker as an elevated lay witness on child psychology

Mom - show continued pattern of negativity towards client

Evidence and Discovery

Pictures of client's home

Medical/AODA Records

Discovery

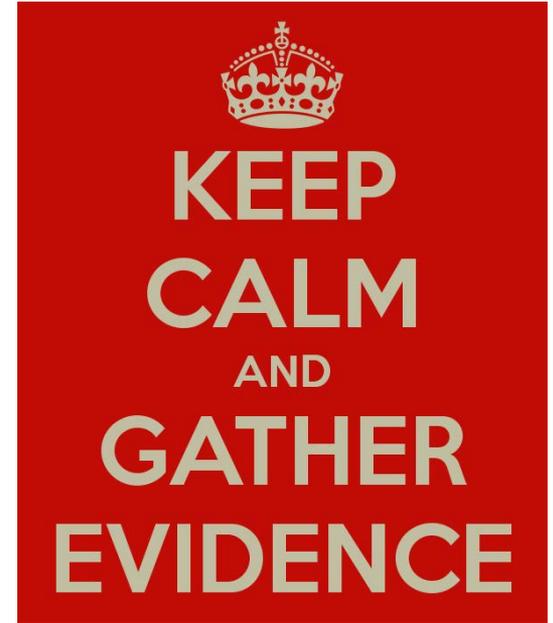
Continue utilizing civil discovery tools to obtain specific best interest information and follow up on anything learned at trial. (ie. revised discovery demands, interrogatories, another round of depositions)

Remember bifurcated means two distinct and separate fact finding processes

Sheboygan County D.H.S.S. v. Julie A.B., 2002 WI 95, ¶129, 255 Wis.

2d 170, 658 N.W.2d 402, Steven V. v. Kelley H., 2004 WI 47,

¶126, 271 Wis. 2d 1, 678 N.W. 2d 856



Educating the Court : You can do this, Judge!

Brief on Factors and Legal Standards

Topics Addressed:

Legislative Intent of Chapter 48

Evidence

Court should err on side of admitting evidence: “At disposition, the Court ‘should welcome’ evidence and testimony relevant to the best interest determination, and the Court must consider the factors set out in section 48.426(3) of the Wisconsin Statutes.” Steven V. at ¶ 27, Julie A.B. at ¶ 29, Wis. Stats § 48.427 (1).

Educating the Court : You can do this, Judge!

Factors - Both Enumerated and Non-enumerated:

Non-enumerated, but Relevant Factors: The Court may also consider factors favorable to the parent, “including prognosis for the parent's markedly changed behavior.” Sheboygan County D.H.S.S. v. Julie A.B., 2002 WI 95, ¶29, 255 Wis. 2d 170, 658 N.W.2d 402.

Alternatives not considered: Any party can present evidence relevant to the issue of disposition and can make alternative dispositional recommendations to the court. Wis. Stat. § 48.427(1). The court can terminate parental rights *only after the finding that all alternatives have been explored* and that termination serves the best interest of the child. A.B. v. P.B., 151 Wis. 2d 312, 322, 444 N.W.2d 415 (Ct. App. 1989).

Educating the Court : You can do this, Judge!

Available Alternatives:

**Propose an alternative to
termination**

**Use evidence to help Judge
visualize this as a viable
alternative**



No Rubberstamping at Dispo!



No Rubberstamping at Dispo!

Sheboygan County D.H.H.S. v. Julie A.B., 2002 WI 95:

¶ 29 The circuit judge is not an automaton. The decision whether to terminate a parent's rights to a child can be one of the most wrenching and agonizing in the law. "Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court." Wis. Stat. § 48.427(1).

¶ 28 The outcome of this hearing is not predetermined. ***The Court “may dismiss the petition if it finds the evidence does not warrant the termination of parental rights.”*** *Id.* at ¶ 28 (emphasis added).

¶ 38. “A court should not dismiss a petition for termination at a dispositional hearing unless it can reconcile dismissal with the best interests of the child.”

Questions?