

HELPING YOUR CLIENT AVOID TERMINATION OF PARENTAL RIGHTS

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Introduction

Upon hearing of this topic, my first reaction was to question its very premise. How can we avoid termination of parental rights proceedings when they appear to be part of our current legal climate? As we know, certain ideas always dominate particular eras. Our current "era" in the legal profession calls for moving all cases as expediently as possible, requiring mediation where ever possible, and in juvenile courts, terminating parental rights after parents fail to meet goals during a narrow window of opportunity. Can the parents' attorney really make a difference, where mental health professionals, substance abuse counselors and social workers have failed? Skeptical of the real ability to make a difference, I set about interviewing DSS attorneys to see what they thought. I was actually surprised by their answers and reproduce the results (preserving anonymity and with some poetic license) as follows.

Interview With Two DSS Attorneys

Profile: both have years (well over one decade-probably two) in the business

First DSS Attorney

Q. Can parents' attorneys help their clients avoid termination of parental rights? It appears to me, there is little they can do to prevent that outcome.

A. Parents' attorneys can make a profound difference.

Q. Oh., why do you say that?

A. In my experience, the parent often doesn't understand what is happening in the courtroom. Although the judge will usually explain the order, (and usually the order is dictated in court) the parent doesn't actually comprehend what happened or what is expected.

The parents' attorney is the single most valuable resource in helping the parent understand the court's order. It is the parent's attorney who has the most credibility with the client.

Q. What can the parent's attorney do to help the client understand what happened in court and what the judge wants to see at the next review hearing?

A. The attorney should sit down with the client outside of court--which is an emotional setting--and explain what the parent needs to do to get his/her children back. I think the attorney should make a written list for the client. The social worker should also be doing the same thing with the client.

Q. Well, not to disparage social workers, but not all are created equal in terms of willingness to help parents. As you know, some parents believe that social workers aren't working with them and have "an attitude" toward them.

A. Sometimes social workers don't communicate as well as they should. If the social worker does have a bad attitude and is not working with the client, then I want to know about it.

Q. So, should the attorney call you if he/she believes the social worker is not working with the client?.

A. Sure.

Q. Any other suggestions for the parents' attorney?

A. Be a sounding board for your client before you get into court. All of us have heard an endless variety of lame excuses that hurt the client when he or she relates them to the judge. If your client wants to tell the judge that he had a positive cocaine test because he was exposed to second-hand crack smoke, head off that excuse before the judge hears it.

Second DSS Attorney

Q. Can parents' attorneys really do anything to prevent TPR proceedings?

A. Sure they can!

Q. Why do you say that?

A. A good parents' attorney can make an enormous difference.

Q. Well, what are examples of specific things the attorney can do?

A. Work with the client and DSS in formulating a Case Plan. If, for example, the Plan won't work for some reason (i.e. the parent doesn't have transportation to get to the parenting classes) bring that problem to the social worker's attention. These Plans can be revised if the requests are reasonable.

Be prepared for Court. So often it appears that the attorney is reading the court report on the day of the hearing. I see them doing that in the courtroom. It's too late to do something about the content at that point.

Q. Do you actually think that certain attorneys get better results than others in terms of reunifying parents with their children?

A. Yes.

Synopsis

These experienced DSS attorneys genuinely believe that the parents' attorney can help the client reunify with his/her children. Here are some points that emerged, most of which simply reflect common sense:

- Don't demonize the social worker and certainly don't encourage your clients to do so. It is simply completely unhelpful to your client's interest and will probably undermine your credibility in court. If there is a problem with the social worker, bring it to the attention of the DSS attorney or the social worker's supervisor in a confidential manner, at least at the onset.
- The Case Plan is essential to your client's success or failure. Usually these Case Plans are formulated without your presence or input. You can, however, at least have input into the Plan's components. Some social workers will meet with you before writing a Case Plan. Meet with your client after he/she signs a Case Plan and go over its components and requirements. Evaluate the Plan to determine if your client is able to perform the requirements, and if they are appropriate. If there is a problem such as lack of transportation or scheduling appointments

during your client's work hours, tell the social worker and try to get the plan changed. If that approach fails, bring a motion in court to change the Plan. Put on the record why your client is asking for the change and why your client is having trouble with the Plan.

- Explain all orders to your client. Do not assume that he/she understood what the judge said.
- Discourage unrealistic thinking and actions. Try to prevent the client from making that lame excuse. All that will happen is that it will appear in the social worker's dictation and be used--very effectively-- against your client.

In Addition to Trying to Work with DSS

A. Make Your Record

1. Preserve all objections.

It is imperative that you preserve objections at the trial level. As you know, if you make an oral objection at a Review Hearing and you do not have the tape transcribed (you will not be able to have the hearing transcribed because, unless you appeal, no one will pay for it.) you have no record of your objection. For that reason, it is very important to create a written record of your objections. You can file written objections to a court report. You can also ask that the court note your objection and be sure that your objection is memorialized in the court's order.

2. Be aware of the case that DSS is building against your client.

Carefully review the orders drafted by the DSS attorney and propose your own findings of fact. If the DSS attorney will not agree to your proposals, submit your proposed order to the judge and let him/her decide what to enter. Chances are, you will get a better result than you would if you passively allow the DSS attorney to draft all orders.

Object (and preserve the objection) to the incorporation of court reports and guardian ad litem reports in the court's order. Judges will at times take the easy way out and incorporate the guardian ad litem's report and the social worker's report as findings of fact. Personally, I believe this is a poor practice as these reports often contain inconsistent information. They also generally contain substantial incompetent evidence, i.e., hearsay.

Focus on those Case Plans as they are the most logical framework for the termination of parental rights proceedings. If, for example, your client agreed to obtain gainful employment and failed to

meet that goal, that failure will be finding of fact that supports a legal conclusion such as willful failure to make progress.

3. Do not forget about your ability to file motions in the cause and calendar them for hearing. So often the DSS attorney controls what matters the court hears. You do not have to have a particular form for the motion. Label it "Motion in the Cause" if you cannot think of more specific label and recite the relief you want and the reasons for it.

For example, if you and your client think visitation should be increased, file a motion to request that relief. If you believe the Case Plan is unreasonable and you cannot reach a resolution out of court, file a motion to have the court address the problem.

4. If you are having trouble getting information from DSS, file discovery requests, such as interrogatories, request for production of documents and requests for admission. Remember the Rules of Civil Procedure apply to Juvenile Court proceedings unless a statute creates a different procedure.

5. If your client does not appear to be making adequate progress toward reunification, consider alternatives such as the establishment of a guardianship under N.C. Gen. Stat. § 7B-600. Some Counties prefer guardianship to custody orders because it is more difficult to set aside the guardianship than to modify a custody order.