

# Never Underestimate the Power of Knowing the Details!

- Know each and every word of every TPR ground
- Know what the appellate courts have said about all key words and phrases in the statutes
- Be familiar with the philosophical discussions by the appellate courts regarding TPRs in general
- Be familiar with the discussions by the appellate courts regarding best interest as it relates to TPR

# Using a case in district court????!!!

- Quote holdings
- Analogize parallel facts
- Pass out copies of cases directly on point

# Ground 1: Significant Points

- Two options: Proceeding immediately to TPR or basing TPR on prior adjudication of abuse or neglect
- Utilizing what case law says about what does or does not constitute abuse and neglect (see pp. 6 – 10 of outline)
- Having a complete understanding of *Ballard* and those cases which have interpreted *Ballard*

# Understanding *Ballard* and Prior Adjudications in TPR

- The key is whether there is a PROBABILITY OF A REPETITION OF ABUSE OR NEGLECT.
  - Reasoning of *Ballard* applies to prior adjudications of abuse AND neglect
  - *Ballard* does NOT require actual new instances of neglect by the parent
  - *Ballard* requires the trial court to examine whether there have been *changed circumstances*
  - Remoteness in time of prior adjudication goes to weight, not admissibility

» See pp. 2 – 6 of outline

# Ground 2: Significant Points

- Understanding the meaning of “willful”
- Understanding “reasonable progress under the circumstances in correcting those conditions that led to removal”
- Time period for analyzing parents’ conduct and *Pierce*
- The twelve months in foster care need not be continuous

# What is “Willful”?

- Less than willful abandonment
- Does not require a showing of fault by parent
- Not precluded by some efforts made to regain custody
- Can be shown by “willful behavior” in not improving circumstances leading to removal
- Incarceration does not prevent finding of willfulness
- Evidence showing a parents’ ability, or capacity to acquire the ability, to overcome factors leading to removal must be apparent
- With minor parent, court must make specific findings (must consider age-related limitations as to willfulness)
  - [Cases on pp. 10 – 11 of outline]

# Reasonable progress under the circumstances . . .

- Sufficient progress necessary: Extremely limited progress is not reasonable progress
- Positive results (from parents' efforts) matter

# Time period for analyzing parents' conduct

- The 12 months in foster care need not be continuous
  - *In re Taylor*
- Cases prior to Jan. 1, 2002: analyze conduct of parents during the 12 mos. immediately preceding filing of TPR petition
  - *In re Pierce*

# Ground 3: Significant Points

- Parent's ability to pay and the child's reasonable needs must be examined
- Absence of notice or lack of awareness of support obligation is no defense
- Parent's lost opportunity to support due to parent's own misconduct is no defense

# Ground Five: Significant Points

- This ground is met only if father has not done any of the 4 actions listed in the statute:
  - Established paternity
  - Legitimated by statute
  - Legitimated by marriage
  - Provided substantial financial support or consistent care to child and mother
- Petitioner or movant carries burden to prove lack of paternity or legitimacy

# Ground Six: Significant Points

- Note recent change to statute
- Detrimental effect on parenting ability must be shown; expert opinion and/or testimony on source of parent's incapability may not be enough
- For minor parents, court must examine whether move to adulthood is likely to cure the basis of the incapability

# Ground 7: Significant Points

- What is willful abandonment?
  - Willful or intentional conduct evincing a settled purpose to forego all parental duties and relinquish all parental claims
  - Refusal to perform natural and legal parental obligations
  - Withholding of presence, love, care, and opportunity to display affection and neglect to lend support and maintenance
  - Failure to pay support, by itself, is not enough
- Abandonment must be for six consecutive months
- The six months must be immediately preceding the filing of the petition

# Ground 8: Significant Points

- Parent either commits or aids, abets, attempts, conspires, or solicits to commit murder or voluntary manslaughter, or commits a felony assault resulting in serious bodily injury
- The victim is a child of the parent or another child residing in the home
- The petitioner has the burden of proving any of these offenses either by proving the elements of the offense in the TPR hearing or by offering proof that a court of competent jurisdiction has convicted the parent of the offense
- Appellate courts have not yet interpreted the language in this relatively new ground

# Ground 9: Significant Points

- Parent has had parental rights involuntarily terminated with respect to another child of the parent
- The parent lacks the ability or willingness to establish a safe home
- Courts have not yet interpreted the language in this relatively new ground

# Incarcerated Parents and TPR

- Lack of financial support as grounds
  - Incarcerated parent must have ability to pay some amount greater than zero
  - Inability to support cannot be due to own misconduct
- Parents efforts (or lack of) to maintain contact with child relating to grounds of neglect, abandonment or willfully leaving in foster care
  - Commission of crime, by itself, does not show abandonment or neglect
  - No formula for how much contact is or is not enough
- New Trends: use of abandonment ground; dependency/incapability ground

# Best Interest and Disposition:

- Separate hearing not required; separation of stages essential
- No one has a burden of proof; the judge makes a discretionary decision

# The court's focus: the child

- The child's best interests, not the rights of the parents, are paramount
- When the child's and parents' interests conflict, the child's best interests control

There's the statutory language . . . and then there's how the statutory language plays out. . .

- The statute says that once grounds are found, the judge *shall* terminate *unless* the court determines that it is not in the child's best interest to do so
- The reality of how this language often plays out in court: the parent's one last chance

# Case notes on Best Interest

- Abuse of discretion standard = limited case law guidance
- “Adoptability” and best interest
- GAL lay opinion regarding best interest