APPELLATE PRACTICE TO STRENGTHEN YOUR PARENT ADVOCACY

Hon. John R. Rodenberg

Minnesota Court of Appeals

TOP PRIORITY:

Know and follow the timing rules

Post-trial motions and appeal

Action	Rule	Timing	From What Event
Appeals			
Appeal	47.02, subd. 2*	20 days	• Service of notice of filing of final order by court administrator • In case of post-trial motions, from service of notice of filing of the order disposing of the last post-trial motion

*Cited rules are found in the Minnesota Rules of Juvenile Protection Procedure (Minn. R. Juv. Prot. P.)

Post-trial motions and appeal

Action	Rule	Timing	From What Event
Post-trial motions			
Post-trial motion	45.01	10 days	• Service of notice of notice of filing • Response, if any, due within **5 days** of filing of service of post-trial motion
Hearing, if any, on post-trial motion	45.01	10 days	• Filing of post-trial motion
Ruling on post-trial motions	45.05	10 days	• Conclusion of hearing on motion
Motion for relief from final order. **Reasons for motion:** • **Mistake, inadvertence, surprise, or excusable neglect;** • **Newly discovered evidence;** • **Fraud;** • **Judgment is void;** • **Any other reason justifying relief from the operation of the order**	46.02	90 days	• Service of notice by court administrator of filing of order

Post-trial motions and appeal

Action	Rule	Timing	From What Event
Petitions or motions to invalidate proceedings under ICWA			
Petition or motion to invalidate under the Indian Child Welfare Act • **Motion is brought in pending juvenile protection matter;** • **Petition is brought in juvenile protection matter where jurisdiction has been terminated**	46.03, subd. 1	No time stated in rule	See 2008 Advisory Committee Comment to Minn. R. Juv. Pro P. 46 on: • Grounds • Time limit • Available relief
Hearing on motion or petition to invalidate under the ICWA	46.03, subd. 3	30 days	• Filing of petition or motion
Ruling on motion or petition	46.03, subd. 4	15 days	• Conclusion of hearing

Appeal

- Appeal shall be taken within 20 days of service of notice *by the court administrator* of filing of the court's order. 47.02, subd. 2.
- If a "timely and proper" post-trial motion has been served and filed, the time for appeal runs from notice of filing by the court administrator of the order disposing of the *last post-trial motion*. 47.02, subd. 2.
- Except as provided in Minn. R. Juv. Prot. P. 47.02 and 47.07, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure

Post-Trial Motions – Rule 45

- Must be served within 10 days
- Responses must be made within 5 days
- *If the district court grants a hearing on a post-trial motion*, the hearing must be held *within 10 days of the date the motion was filed*
- *Rule 46.02 allows for relief for mistake, inadvertence, excusable neglect, newly discovered evidence, fraud and the like within 90 days following the court administrator's service of the notice of filing*

ICWA Proceedings

- No time limit on petitions or motions to invalidate actions for non-compliance with ICWA
- Hearing must be held within 30 days. Rule 46.03, subd. 3.
- Ruling must be made within 15 days of the hearing. Rule 46.03, subd. 4.

Percentage of TPR appeals dismissed involuntarily ranges from ***10% to 20%*** every year

Year	Appeals Filed	Decided on Merits	Dismissed – Not Stipulated – Entire Case*	Voluntary Dismissals
2016	70	53	14	3
2017	76	62	13	1
2018	78	61	16	1

*Failure to timely file appeal, failure to serve all parties, failure to file proof of service, etc.

PRIORITY:

Understand the agency's obligation

Agencies must:

- Assess a parent's abilities relative to ***conditions that actually affect parenting***.
- Make reasonable efforts to reunify, "beyond mere matters of form so as to include real, genuine assistance . . . ." The agency ***actually has to try***.
- In ICWA cases, the efforts must be active.

Where a county fails to produce a written case plan as described in Minn. Stat. § 260C.212, subd. 1 (2016), it has failed to satisfy its reasonable-efforts obligation even if the parent has opposed participating in developing a case plan.

In re Welfare of Children of A.R.B.,
906 N.W.2d 894 (Minn. App. 2018)

PRIORITY:

Make a record in district court regarding reasonable efforts

If the parent's response to everything during the case was "leave me alone," it is going to be hard to argue on appeal that the agency failed to make reasonable efforts at reunification.

- Better to have requested assistance for things that are difficult or burdensome (e.g., bus passes or childcare to attend assessments/appointments rather than "I won't do those things")

- Better to request elimination of "case plan" items that have no bearing on abilities to parent (e.g., getting a g.e.d.)

- When the agency is not providing services or things you think are reasonable, clearly request ***on the record*** that the agency provide those things

PRIORITY:

Understand the “bypass” provision

Reunification efforts are not required under Minn. Stat. § 260.012 in cases where:

1. The parent has subjected a child to **egregious harm**
2. **Prior involuntary termination** of rights of the parent to another child
3. **Abandonment**
4. Custodial rights to another child have been **involuntarily transferred**
5. **Reunification would be "futile and therefore unreasonable"**

2, 3 and 4 are essentially binary questions – probably no basis for district court review beyond documents in the file.

In a proceeding for the termination of parental rights, a parent may rebut the presumption of palpable unfitness by producing evidence that would be sufficient to justify a finding of fact that the parent is not palpably unfit. If a parent introduces evidence in an attempt to rebut the statutory presumption, a district court must determine whether the evidence is sufficient to raise a genuine issue of fact as to whether the parent is palpably unfit.

In re Welfare of Child of J.A.K., 907 N.W.2d 241 (Minn. App. 2018), *review denied* (Minn. Feb. 26, 2018)

Egregious harm –

- Must be determined by the court

Minn. Stat. § 260.012

- Statute refers to a **prima facie case** being found by the court

- Under Minn. Stat. § 260C.301, subd. 1(b)(6), a child is "in the parent's care" when the child is under the supervision, charge, or watchful oversight of the person subject to the termination proceeding.

In re Welfare of Child of K.L.W., 924 N.W.2d 649 (Minn. App. 2019), *review denied* (Minn. Mar. 8, 2019)

- Open Question: Whether, in a case where the petition ***alleges*** egregious harm, parent is entitled to a hearing to ***rebut*** that prima facie case as part of the parent's right to reasonable efforts to reunify

"Futile and unreasonable" efforts are not necessary under Minn. Stat. § 260.012

District court – not the agency – **must make this finding**.

In re Welfare of Children of D.E.T., Nos. A13-1148, A13-1164 (Minn. App. Nov. 27, 2013) *review denied* (Minn. Dec. 31, 2013)

Even where there has been a prior involuntary termination, do not presume that you can't overcome the presumption of parental unfitness.

- "[T]he presumption is easily rebuttable."

- The presumption only shifts the burden of production. The parent need only produce "enough evidence to support a finding that the parent is suitable 'to be entrusted with the care' of the children."

- "[T]he juvenile court also must independently find in each case, even with a presumption of unfitness, that termination is in the child's best interests."

Welfare of the Child of R.D.L., 853 N.W.2d 127, 137 (Minn. 2014)

PRIORITY:

Parents are entitled to appointed counsel regardless of party status

CHIPS Proceedings

- In a CHIPS proceeding, a parent's right to counsel under Minn. Stat. § 260C.163, subd. 3(c) (2018), does NOT depend on whether the parent has been designated as a party
- All parents in such cases who desire counsel and are unable to afford counsel are entitled to appointed counsel when the district court "feels such an appointment is appropriate."

In re Welfare of Child of A.M.C., 920 N.W.2d 648 (Minn. App. 2018)

Query: If a district court "feels" appointment of counsel is not appropriate:

- How do you make a record for argument on appeal that the district court abused its discretion?
- Must/should you petition for relief by prohibition or mandamus on an interim basis?
- If "yes," then how does the unrepresented parent get counsel for appeal?

PRIORITY:

Understand the applicable standard of review

District court findings of underlying or basic facts are reviewed for clear error, in light of the clear-and-convincing standard of proof.

In re Welfare of J.R.B., 805 N.W.2d 895, 899 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

District court determination of whether a statutory basis for termination has been shown is for abuse of discretion.

Id. at 900-902

District court abuses its discretion if it misapplies the law.

Dobrin v. Dobrin, 569 N.W.2d 199, 202 (Minn. 1997)

Review of a district court's best-interests determination is for abuse of discretion.

J.R.B., 805 at 905

"Because the best-interests analysis involves credibility determinations and is 'generally not susceptible to an appellate court's global review of the record,' we give considerable deference to the district court's findings."

In re Welfare of Child of J.K.T., 814 N.W.2d 76, 92 (Minn. App. 2012) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

Take-away messages for appellate briefing

- Arguing that the record would support findings different than those found by the district court is exceedingly unlikely to meet with success.
- The district court's best-interests findings will almost always be affirmed.
- If a district court misapplies the law, you may find success on appeal.

DO

- Timely serve and file post-trial motions and appeals
- Determine and argue whether reasonable/active efforts were provided toward reunification
- Argue failures to obtain district court approval of "bypass"
- Ensure that parents are not denied appointed counsel because of non-party status
- On appeal, focus on whether the district court made errors of law

DON'T

- Reargue facts as found by the district court unless the record will not support the findings made
- Reargue best interests in most cases
- Concede that the presumption of unfitness precludes preservation of parental rights

Thank you

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Questions