

*Appellate Cases to Strengthen  
Your Parent Advocacy*

The Honorable John Rodenberg  
Associate Judge  
Minnesota Court of Appeals

# *Object of Representation for Parents' Attorneys*

1. Restore full custody
2. Participate in planning for an alternative to full custody with the parent
  - custody with the “other” parent;
  - with relatives;
  - with someone open to contact with birth/former legal parent

# Constitutional Basis for Parental Rights

- Cases that set parameters for relationship between the state, parents, and children
- *Meyer v. Nebraska*, 262 U.S. 390 (1923)
- *Pierce v. Society of Sisters*, 269 U.S. 510 (1925)
- *Prince v. Massachusetts*, 321 U.S. 158 (1944)

# Constitutional Basis for Parental Rights

*Wisconsin v. Yoder, 406 U.S. 205 (1972)*

*Troxel v. Granville, 530 U.S. 57 (2000)*

Take home points from U.S. Supreme Court cases:

- ✓ Parents have a fundamental liberty interest in directing the upbringing of their children which is protected by the due process clause of the 14<sup>th</sup> amendment.
- ✓ The state may infringe only for a compelling reason and only insofar as that infringement is necessary to protect the state's interest.

# Constitutional Basis for Parental Rights: Putative Fathers

- *Stanley v. Illinois*, 405 U.S. 645 (1972)
- *Caban. v. Mohammed*, 441 U.S. 380 (1979)
- *Lehr v. Robertson* 463 U.S. 248 (1983)

# Minimum Constitutional Protections in TPR matters

- *Lassiter v. Department of Social Services*, 352 U.S. 18 (1981)
- *Santosky v. Kramer*, 455 U.S. 745 (1982)
- *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996)

# Minnesota: Standard of Proof & Standard of Review

- ***In the Matter of the Welfare of the Children of K.S.F., a/k/a/ K.B., Parent 823 N.W.2d 656 (Minn. App. 2012)*** –Traces history of “clear and convincing” standard and restates it. Discusses use of “substantial evidence” as meaning the same as clear and convincing.
- ***In re Welfare of the Children of T.R., 750 N.W.2d 626 (Minn. 2008)*** – A trial court’s finding is clearly erroneous, as a standard for appellate review, if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. (Note: Supreme court reversed TPR by district court.)

# Making the Record

- Standard for review – reversal is warranted when decision is clearly erroneous or unsupported by substantial evidence



# *In re Child of Michael Simon, Parent, 662 N.W.2d 155 (Minn. App. 2004)*

- Reversal for evidentiary ruling only if prejudicial error
- Foundational requirements for business exception:
  - 1) Regularity of records produces habits of precision in the record keeper
  - 2) Records are regularly checked
  - 3) Employees are motivated to make accurate records because the businesses that employ them function in reliance on these records
  - 4) Employees are required to be accurate and risk embarrassment or dismissal if they fail
- Proponent of record must be able to describe how records are compiled in order to establish the foundational requirements

## Two other frequently raised issues on appeal

- Have not proven reasonable efforts (by clear and convincing standard)
- Permanency order was not in the child's best interests

# Reasonable Efforts

- Remember: parents are entitled to assessment; assessment of parent's ability to parent must related to conditions that actually affect parenting
- Case plan must connect to parent's issue
- **In re Children of T.R., 750 N.W.2d 656, (Minn. 2008)**

# *Reasonable Efforts*

- *In re S.W. 727 N.W.2d 144, (Minn. App. 2007)*
- "Reasonable efforts" at rehabilitation, for purposes of termination of parental rights proceedings, are services that go beyond mere matters of form so as to include real, genuine assistance; the quality and quantity of efforts to rehabilitate and reunify the family impact the reasonableness of those efforts.

# Post-trial motions and appeal

Action	Rule	Timing	From What Event
<b>Appeals</b>			
Appeal	47.02	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
<b>Post-trial motions</b>			
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:	46.02	90 days	Service of notice by court administrator of filing of order
<ul style="list-style-type: none"> <li>• Mistake, inadvertence, surprise, or excusable neglect;</li> <li>• Newly discovered evidence;</li> <li>• Fraud;</li> <li>• Judgment is void;</li> <li>• Any other reason justifying relief from the operation of the order</li> </ul>			
<b>Petitions or motions to invalidate proceedings under ICWA</b>			
Petition or motion to invalidate under the Indian Child Welfare Act	46.03	No time stated in rule	See 2008 Advisory Committee Comment to MnRJuvPro 46 on: <ul style="list-style-type: none"> <li>• Grounds</li> <li>• Time limit</li> <li>• Available relief</li> </ul>
<ul style="list-style-type: none"> <li>• Motion is brought in pending juvenile protection matter;</li> <li>• Petition is brought in juvenile protection matter where jurisdiction has been terminated</li> </ul>			
Hearing on motion or petition to invalidate under the ICWA	46.03	30 days	Filing of petition or motion
Ruling on motion or petition	46.03	15 days	Conclusion of hearing