

Permanency Plans and Their Discontents

A Challenge for Parents' Lawyers

Two Challenges for Parents in Perm. Plans

1. Permanency Plans and Reasonable Efforts Findings
2. Restrictive Notions of Permanency

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Permanency Plans: the law

- 46b-129(k) provides for plan hearings roughly yearly after a child is committed to DCF care.
- DCF must prove that plan is in child's best interests, by a preponderance of the evidence.
- Per statute, perm. plan hearings focus on best interests and permanency:

“[T]he court shall approve a permanency plan that is in the best interests of the child or youth and takes into consideration the child's or youth's need for permanency. The child's or youth's health and safety shall be of paramount concern in formulating such plan.”

Permanency Plans: the practice

- The perm. plan statute exists (in large part) so that DCF can comply with ASFA and continue to receive needed federal funds.
- Busy courts frequently (and understandably) treat perm. plans as a necessary formality:
 - They pose a very limited question;
 - They have a low standard of proof;
 - They assure funding that everybody agrees should be delivered;
 - They frequently come shortly before more consequential hearings (neglect, TPR);
 - They're effectively not binding.

Permanency Plans & Reasonable Efforts: the problem for parents

- Connecticut General Statutes §§ 117a-112(j) and 46b-129(k), read together, make clear that **once a permanency plan has been changed to something other than reunification, DCF doesn't have to prove reasonable efforts at a TPR trial.** *See In re Eden F.*, 250 Conn. 674 (1999).
- THAT'S A BIG DEAL! Reasonable Efforts is the element in TPR cases most likely to give parents more time to rehabilitate, and, like all elements in TPR, it must (ordinarily) be proved by clear and convincing evidence. But perm. plans must only be proved by a preponderance of the evidence.

Permanency Plans & Reasonable Efforts: possible approaches

- See if DCF will agree to, or argue for, the adoption of a concurrent plan of reunification.
- See if DCF will stipulate, or the court will affirmatively rule, that **no finding is being made as to reasonable efforts.**
- Litigate everything. A lot.

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What Does “Permanency” Mean?

- ASFA guidelines are meant to keep kids from languishing in group homes or other impermanent settings while rehabilitation and reunification efforts continue.
- DCF must seek TPR whenever a child has been in care for 15 consecutive months or 15 total months in a 22-month period. Conn. Gen. Stat. §§ 17a-111a, -112(j).
- Lead to a relatively compressed timeline.
- Courts have construed “permanency” to mean not just actual permanent placement, but the elimination of uncertainty as to whether reunification will occur.

What Does “Permanency” Mean?

- Lack of an identified permanent placement is not a barrier to termination. *In re Davonta V.*, 285 Conn. 483 (2008).
- Other than open adoption, there is no mechanism to maintain contact between children and biological parents after termination other than the consent of new caregivers.

What Happens With Kids Not Placed Before Termination?

- DCF still struggles to place older kids and kids with significant mental health problems.
- About 2/3 of kids in DCF congregate care at a given moment are overstays.
- Kids who stay in care longer have worse outcomes later in life.
- Kids who stay in foster care into adolescence and don't have contact with biological parents have greater emotional difficulties and worse outcomes than those who maintain contact.

A Broader Conception of Permanency and Family

“In focusing on the mother and father as a unit, a myriad of other players are written out of the script altogether. In the case of the single mother, for example, the superiority of the nuclear family model, combined with the exclusion of all but the members of the nuclear family, means that the key roles played by members of the extended family, such as grandmothers and uncles, are legally invisible. Yet grandmothers and uncles can provide essential family functions.”

A. Harvison Young, *Reconceiving the Family: Challenging the Paradigm of the Exclusive Family*, 6 Am. U. J. Gender & Law 505 (1998)

A Broader Conception of Permanency and Family

Prior to removal, birth parents may already be in a secondary role or share in more diffuse child-rearing responsibility. For them, ongoing contact with their birth parents, even after removal, need not pose an obstacle to permanency and bonding with new caregivers. Rather, such contact can be a useful element of continuity in a time of difficult transition.

S. Coupet, *Swimming Upstream Against the Great Adoption Tide: Making the Case for "Impermanence,"* 34 *Cap. U.L. Rev.* 405 (2005)

A Broader Conception of Permanency and Family

So when we see

- Children who come into care after infancy;
- Children in care with a strong and beneficial bond to a parent, even though that parent cannot care for them;
- Children who were raised, prior to coming into care, by an extended kinship or quasi-kinship group;
- Children who, because of age or specialized needs, are likely to remain in care for an extended period or throughout their minority;
- Children who are unlikely to remain in care past their 18th birthdays...

A Broader Conception of Permanency and Family

We should make every effort to preserve and strengthen bonds to

- Communal caregivers, including kin and friends
- Parents who can't rehabilitate but can be positive, stabilizing influences

Practical Changes

- PTOG
- Applying Least-Restrictive-Means Test to TPR Dispositions
(In re Azareon Y.)
- Less binary approach to the notion of permanency throughout the life of a neglect case
 - Identifying kids who are at risk of not finding real permanence
 - Concurrent planning
 - Focusing on maintaining and bolstering familial relationships – PRIOR TO TPR – even when they will not result in placement
 - For APPLA kids, realistic focus on what will happen when child turns 18