FINDING FAMILY: THE WHY AND HOW OF FINDING CONNECTIONS

OCR CORE COMPETENCY TRAINING

JANUARY 28, 2021

SHIRLEY GIEN, ESQ.

1

OUR DARK HISTORY

- Georgia Tann trafficked children from the 1920s-1950 through the Tennessee Children's Home Society in Memphis.
- She used her unlicensed home as a front for her black market baby adoption scheme, kidnapping children from often loving but poor homes and selling them to high-profile families who thought they were "saving" children.
- Recommended reading: *Before We Were Yours* by Lisa Wingate

2

PARENTING AND DUE PROCESS

The **Due Process Clause** of the Fourteenth Amendment protects the fundamental right of parents to make decision concerning the care, custody and control of their children.

There is a presumption that fit parents act in the best interests of their children - if a parent is fit, there is normally no reason for the State to second-guess the ability of that parent to make the best decisions concerning the rearing of his or her children.

Troxel v. Granville, 530 U.S. 57 (2000), In re Adoption of C.A., 137 P.3d 318 (Colo.2006).

3

REUNIFICATION IS *ALWAYS* THE GOAL

- C.R.S. section 19-3-702(4): The court must find a **compelling reason** why it is not in the child's best interests to return home prior to entering APR to a nonparent.
- C.R.S. section 19-3-703(3): At the Permanency Hearing, "**the court shall first determine** whether the child shall be returned to the child's parent or guardian" and the date on which the child shall be returned. … If the child is not returned to the custody of a parent or guardian, the court shall determine whether there is a **substantial probability** that the child will be returned to the physical custody of the parent or guardian within six months.
- C.R.S. section 19-3-703(4): The court must be provided with documentation of a **compelling reason** for establishing a permanency plan with a goal other than reunification, adoption, or legal guardianship.

4

RELATIVE PLACEMENT SHALL BE CONSIDERED (BUT ISN'T BINDING)

C.R.S. section 19-3-605(1):

- Following an order of termination of the parent-child legal relationship, **the court shall consider, but shall not be bound by,** a request that guardianship and legal custody of the child be placed with a **relative of the child.**
- When ordering guardianship of the person and legal custody of the child, the court **may give preference to a grandparent, aunt, uncle, brother, sister, half-sibling, or first cousin** of the child when such relative has made a timely request therefor … and the court determines that such placement is in the **best interests of the child.**
- Such request must be submitted to the court no later than **twenty days** after the motion for termination is filed pursuant to section 19-3-602. **Nothing** in this section shall be construed to require the child placement agency with physical custody of the child to **notify said relatives** described in this section of the pending termination of parental rights.

5

… AND SIBLINGS MATTER TOO

C.R.S. section 19-3-605(2):

- When a sibling group is placed out of the home, if DHS locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, **the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children.**
- Such presumption **may be rebutted** by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of the child or children.

6

EXPEDITED PERMANENT PLACEMENT ("EPP")

C.R.S. section 19-3-703:

- "EPP" cases mean the **youngest child** on the petition is **under age 6** when petition is filed.
- "EPP" means the child shall be placed in a permanent home **no later than 12 months after removal**.
- "Permanent home" can mean reunification, relative placement, adoptive home, or APR.
- The court can find **good cause** to go beyond EPP guidelines if it determines that placement in a permanent home is not in the child's best interests at that time.
- In so doing, the court must be shown **clear and convincing evidence** that **reasonable efforts** were made to find the child an appropriate permanent home and such a home is not currently available, OR that the child's mental or physical needs deem it improbable that such child would have a successful permanent placement.

7

CHILDREN'S UNDERSTANDING OF ADOPTION: DEVELOPMENTAL AND CLINICAL IMPLICATIONS

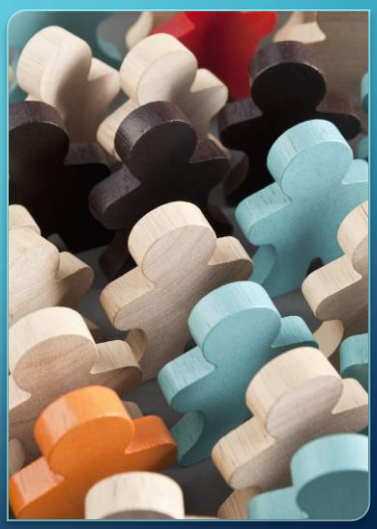
- DAVID M. BRODZINSKY

- Adopted children display higher levels of mental health symptoms and more learning problems than their non-adopted peers.
- Differences are not due to adoption *per se* but circumstances that pre-date placements such as genetics, negative prenatal experiences (exposure to substances), and pre-placement adversities such as malnutrition, neglect, abuse, parental psychopathology, and deprivations of "orphanage life."
- "Adoption related loss": The experience of loss is extremely common in adopted individuals, including feelings of confusion, sadness, and other grief-related emotions associated with separation from birth family.
- Adopted children and teens express grief with confusion, anxiety, sadness, crying, anger, or acting out. Children placed as newborns also experience loss and fantasize about their birthparents. Children who believe their birthparents made a voluntary choice often self-blame.
- Loss experienced by adopted children is associated with separation from birthparents, siblings, grandparents, uncles, aunts and cousins. For those placed at older ages, the loss of birthparents, siblings, and/or extended family is more profound because it severs known relationships and emotional security.

8

WHAT IS KIN?
WHY DOES KIN MATTER?

- Kinship caregivers are relatives, friends, neighbors, teachers, and other people with a significant relationship to the child.
- Kin can provide:
  - Placement
  - Respite
  - Support and connection
  - Cultural awareness and familiarity
- Never rely on DHS – ask parents, ask teachers, ask neighbors, ask friends, ask the child!
- ask, ask, and ask again…

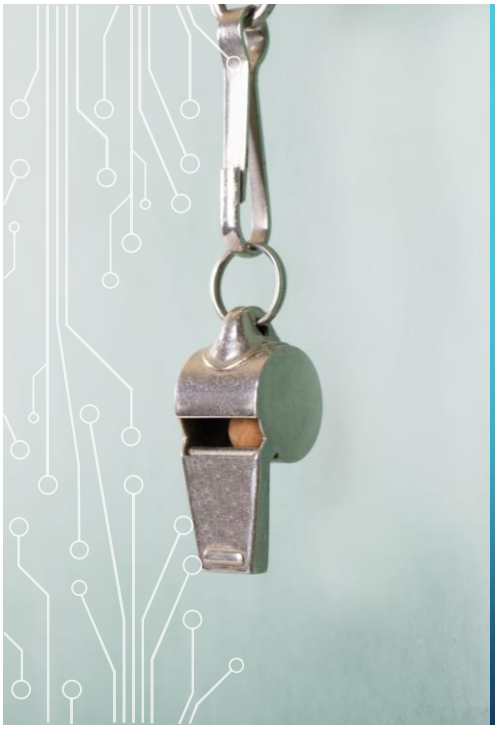


9

THE "DILIGENT SEARCH"

- Relatives and kin serve as potential placements, potential support, and a connection to the child's identity, past and future.
- DHS MUST begin family search and engagement for noncustodial parents within 3 working days. [12 CCR 2509-4:7.304.52(A)(1)]
- The noncustodial parent MUST be notified of the child's removal from the home and the option to participate in the care, treatment, and placement of the child.
- The GAL MUST ensure DHS is meeting its obligation to conduct an immediate diligent search for noncustodial parents and engage them as early as possible! [CJD 04-06(V)(D)(4)(f)]

10



PRACTICE TIPS AND POINTERS

- The search for kin and permanency is specific – one size never fits all
- Ask for the relative affidavit – and pursue it
- Ask for another diligent search – and pursue it
- If out of state family is out there, ask for the ICPC EARLY (spoiler alert: "expedited ICPC" is a legal fiction)
- File motions to hold DHS accountable (you are a lawyer after all)

11

MORE FOOD FOR THOUGHT

Family is not just for D&N cases. Youths with JDs need consistent and positive connections to support them and keep them going during and after the case.

Failure to follow up on a relative affidavit or to complete a diligent search can have appellate consequences - that should be easily avoided.

Yes, it's our job too – not just DHS, so don't rely on them to find family.

Failure to find family in a timely fashion can have lasting effects on a child who may always wonder down the road what might have happened if...

12

FAMILY VS. ATTACHMENT

- Competing interests between family and attachment
- Both are important and have lasting implications
- Attachment begins to outweigh family over time
- Ask early and often - you don't want to be caught in the middle
- Cultural implications, sensitivity to culture, and bias awareness

13