FINDING FAMILY: THE IMPORTANCE OF RELATIVE AND KIN PLACEMENT

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A DARK HISTORY OF ADOPTION

- Georgia Tann trafficked thousands of 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 poor homes and selling them to high-profile families who thought they were "saving" children.
- She charged ~$70,000 in today's dollars
- Recommended reading:

  Before We Were Yours by Lisa Wingate

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PARENTING AND DUE PROCESS

The **Due Process Clause** of the Fourteenth Amendment protects the fundamental right of parents to make decisions 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).

REUNIFICATION IS THE DEFAULT, NOT THE EXCEPTION

- C.R.S. § 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. § 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. § 19-3-703(4): The court must be provided with documentation of a **compelling reason** for establishing a permanency plan other than reunification, adoption, or legal guardianship.

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RELATIVE PLACEMENT PREFERENCE

Federal law provides that a state must consider giving **placement preference to an adult relative** who meets all the relevant child protection standards.

42 U.S.C. § 671(a)(19).

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CRS § 19-3-702(9):

PRE-TERMINATION FACTORS FOR PLACEMENT DETERMINATIONS

In making placement determinations, the court **shall consider** all pertinent information related to modifying placement including:

- (b) …**potentially permanent placement** for the child;
- (c) The child's actual **age and developmental stage** and … **attachment needs**;
- (d) … **psychological ties** to a person who could provide a permanent placement for the child, … whether this person **maintained contact with the child** …;
- (e) … willing to **maintain appropriate contact** after an adoption of the child with the child's relatives, particularly sibling relatives…;
- (f) … aware[ness] of the **child's culture** and willing[ness] to provide the child with positive ties to his or her culture;
- (g) The child's **medical, physical, emotional, or other specific needs …**; and
- (h) The child's **attachment** to the child's caregiver … and the **possible effects on the child's emotional well-being** if the child is removed from the caregiver's home.

CRS § 19-3-605(1):

POST-TERMINATION FACTORS FOR PLACEMENT DETERMINATIONS

- 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 § 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.

CRS §19-3-100.5: LEGISLATIVE DECLARATION OF MOVEMENT OF CHILDREN

- (3) Judges, attorneys, and guardians ad litem … take independent responsibility to ensure that "reasonable efforts"
  - to prevent out-of-home placements have been made only when appropriate,
  - that permanency occurs for children in foster care, and
  - that safe child placements occur in each case.

CRS §19-3-100.5: LEGISLATIVE DECLARATION OF MOVEMENT OF CHILDREN

- (4)(a) The general assembly also hereby finds that:
- (I) The American Academy of Pediatrics has found that emotional and cognitive disruptions in the early lives of children have the potential to **impair brain development.** Paramount in the lives of children in foster care is their need for **continuity with their primary attachment figures** and a sense of permanence that is enhanced when the child's placement is stable.
- (II) The American Academy of Pediatrics has found that **attachment to a primary caregiver** is essential to the development of emotional security and social conscience; and

CRS §19-3-100.5: LEGISLATIVE DECLARATION OF MOVEMENT OF CHILDREN

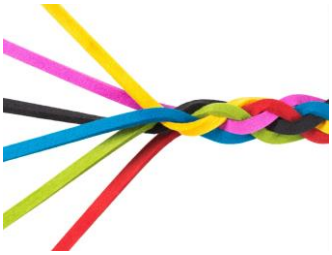
- (III) According to the American Academy of Pediatrics, optimal child development occurs when a spectrum of needs is consistently met over an extended period.
- Separation of a child from his or her primary caregiver occurring between **six months and three years of age is more likely to result in subsequent emotional disturbances for the child** than if the separation occurs when the child is older.
- **Repeated moves** from home to home compound the adverse consequences of separation.
- Further, **the younger the child and the more extended the period of uncertainty or separation**, the more detrimental the separation will be to the child's well-being.
- Any intervention that separates a child from the child's primary caregiver or person who provides psychological support to the child should be cautiously considered and treated as a matter of urgency and profound importance.

CRS §19-3-100.5: LEGISLATIVE DECLARATION OF MOVEMENT OF CHILDREN

- (4)(b) The general assembly further finds that **older children in foster care are at a high risk** of having long-term mental health issues, dropping out of school, developing alcohol and drug dependence, experiencing promiscuity, and interacting with the criminal justice system.
- **Multiple moves** for older children lead to disruption in schooling and meaningful relationships and attachments, including relationships with peers and family of origin.
- As a result these children have few, if any, **long-term connections** when they leave foster care, resulting in little support for their growth into independent adults.
- (c) The general assembly therefore declares that **multiple moves for children in the dependency and neglect system should be discouraged in favor of permanent planning** upon which these children can rely for their healthy mental, physical, and emotional development.

THE SIBLING PRESUMPTION

- Colorado General Assembly recognized it is beneficial for a child to continue relationships with siblings. C.R.S. § 19-3-500.2.
- **The court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children** where an appropriate placement is available. This may be rebutted by a preponderance of the evidence. C.R.S. § 19-3-605(2).
- The Children's Code **requires efforts to place siblings together** unless there is a danger of specific harm to a child or not in their best interest. C.R.S. § 19-5-200.2(2)(c).
- **Joint sibling placements take precedence over grandparent/relative placement preferences**. C.R.S. § 19-3-402(2)(b), 19-3-403(3.6)(b), 19-3-605(2).
- GRID pp. F297-F305.



EPP: TIME MARCHES ON

C.R.S. § 19-3-703:

- "EPP" applies when the youngest child is under 6 years old, and applies to all of the children on the petition.
- "EPP" means the child must be in their permanent home (through reunification, relatives, adoptive home, or APR) no later than 12 months after removal.
- The court can find good cause to go beyond EPP guidelines if a permanent home is not in the child's best interests at that time.

FAMILY VS. ATTACHMENT

- Family and attachment can become competing interests over time
- Both are important and have lasting implications throughout a child's life
- Ask early and often to avoid getting caught in the middle
- Manage foster family and biological family expectations (and CASA too)

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WHAT IS KIN?

"Kin may be

- a relative of the child,
- a person ascribed by the family as having a family-like relationship with the child, or
- a person that has a prior significant relationship with the child.

These relationships take into account cultural values and continuity of significant relationships with the child."

C.R.S. § 19-1-103(71.3), § 26-6-102(19)

GRID pp. F283-F292.

HOW DO WE FIND KIN?

- Relatives and kin are potential placements, supports, and a connection to the child's identity, past and future.
- GAL must ensure reasonable efforts are being made to reunify. C.R.S. § 19-3-203(3), CJD 04-06(V)(D)(4)(f).
- DHS must begin searching for noncustodial parents within 3 days of removal. 12 CCR 2509-4:7.304.52(A)(1).
- DHS must begin searching for adult relatives within 30 days of removal. C.R.S § 19-3-403(3.6).
- Diligent searches must be repeated every 6 months.
- DHS uses Accurint and Intelius, but you can search for family too using free social media, or zabasearch.com, 411.com, or www.familyfinding.org/search-services.html.
- GRID pp. F137-F145.

DON'T TAKE NO FOR AN ANSWER

- DHS **must** share the results of the fingerprint-based background checks with the GAL pursuant to a court order. C.R.S. § 19-3-203(2).
- If the report identifies concerns or kin is deemed "unqualified", **meet** the relative and **seek** information such as releases to talk to parole officers or treating professions.
- Placement may occur pursuant to "an order of the court affirming placement of the child with the kin." C.R.S. § 19-3-407(3).
- If the GAL believes kin is safe and appropriate for the child, **advocate** for DHS to create a safety plan OR **file a motion or request** that the court to order placement with the relative or kin pursuant to C.R.S. § 19-3-407(3).
- Kin can be **Special Respondents** to mitigate concerns.
- **Parents, grandparents, and relatives may intervene** as a matter of right regardless of whether the child has been in their care!

DISPARATE OUTCOMES BETWEEN KINSHIP AND FOSTER CARE

- African American children are **more than twice as likely** to experience kinship care than the overall population, with 1 in 5 African American children spending time in kinship care.
- Children placed with kin experienced **fewer** behavioral problems, mental health disorders, and placement disruptions compared with their counterparts in nonkinship care.
- 32% of children placed in early kinship care showed behavioral problems thirty-six months after placement versus 46% of children placed in nonkinship homes.
- Children placed with kin experienced **less stigma and trauma** from the separation from parents and were more likely to **remain connected** to siblings and maintain family cultural tradition.

SUPPORTING KIN

- Kinship placements generally result in better outcomes, but also require more support than "typical" foster homes.
- Relative caregivers are more likely to be:
  - Single
  - Poorer
  - Older
  - Have less formal education than nonkin foster parents
  - Care for large sibling groups, and
  - Have chronic health conditions or disabilities related to age.
- Help can be **certification** for kinship foster care, waivers of non-safety certification standards, RGAP, in-kind support services through DHS
- If **non-certified**, consider TANF, child support, social security, or death benefits.
- See: www.Colorado.gov/pacific/cdhs/kinship-connection

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WHY DOES KIN MATTER?

- Kin are a connection to roots:
  - Placement
  - Respite
  - Support
  - Historical connection and information
  - Cultural awareness and familiarity
- **Don't rely on DHS to find kin!**
- ask the parents, ask teachers, ask neighbors, ask friends, ask the child!
- ask, ask, and ask again…

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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 due to circumstances that pre-date placements, such as genetics, negative prenatal experiences (exposure to substances), and adversities such as malnutrition, neglect, abuse, parental psychopathology, and deprivations of "orphanage life."

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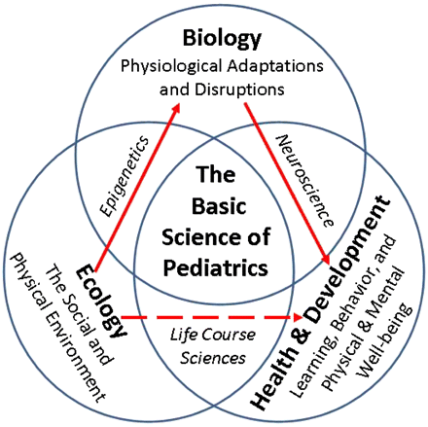
- "Adoption related loss": feelings of confusion, sadness, and other grief-related emotions associated with separation from birth family.
- Grief is expressed with confusion, anxiety, sadness, crying, anger, or acting out.
- Even those placed as newborns experience loss, fantasize about their birthparents, and engage in self-blame.
- Feelings of loss are associated with separation from birthparents, siblings, grandparents, uncles, aunts and cousins, even more so when the loss severs known relationships and emotional security.

ADVERSE CHILD EXPERIENCES (ACES)

- Adverse childhood experiences (ACEs) include early exposure to mental health diagnoses, violence, substance abuse, sexual abuse, housing instability, food insecurity, and prison.
- ACEs have been shown to have a significant impact on later health and well-being including obesity, cancer, heart disease, mental illness, and premature mortality.
- Children of parents who had past ACE exposure had statistically significant higher odds of poor health status, asthma diagnoses, and even excessive television watching.
- ACEs may have lasting health effects that span across generations from parent to child.
- ACE Questionnaire
- Recommended Reading: *Hillbilly Elegy* by JD Vance

ECOBIODEVELOPMENTAL PEDIATRICS (EBD)

- EBD presents a way to think about the underlying biological mechanisms that explain the link between early life adversities and important adult outcomes.
- Significant stress in the lives of young children is viewed as a risk factor for health-threatening behaviors as well as a catalyst for physiologic responses that can lay the groundwork for chronic, stress-related diseases later in life.
- Although genetic variability clearly plays a role in stress reactivity, early childhood experiences and environmental influences can have considerable impact.



EPIGENETICS/ INHERITED TRAUMA

- Epigenetics is the study of changes in organisms caused by modification of gene expression rather than alteration of the genetic code itself. It is the interplay of "nature" vs. "nurture."
- Severity of a parent's PTSD symptoms may contribute to a child's psychological difficulties including anxiety, depression, and behavior problems.
- Epigenetics does not change the sequence of the DNA code but alters the expression of genes and may contribute to long-lasting – in some cases intergenerational – phenotypic effects.

ICWA CONSIDERATIONS

The Indian Child Welfare Act (ICWA) defines an "Indian child" as:

"any unmarried person who is under age eighteen and is either

(1) a **member** of an Indian tribe or

(2) is **eligible for membership** in an Indian tribe and is the biological child of a member of an Indian tribe."

[25 U.S.C. § 1903]

GRID pp. F185-F208.

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ICWA PLACEMENT PREFERENCES

- Adoptive placement preferences (in the absence of good cause to the contrary):
  - A member of the child's **extended family** (native or non-native)
  - Other members of the **Indian child's tribe**, or
  - **Other Indian families**.
- Foster care or pre-adoptive placement preferences (in the absence of good cause to the contrary):
  - A member of the child's **extended family** (native or non-native)
  - A foster home licensed, approved, or specified by the **Indian child's tribe**;
  - An **Indian foster home** licensed or approved by an authorized non-Indian licensing authority; or
  - An **institution for children approved by an Indian tribe** or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

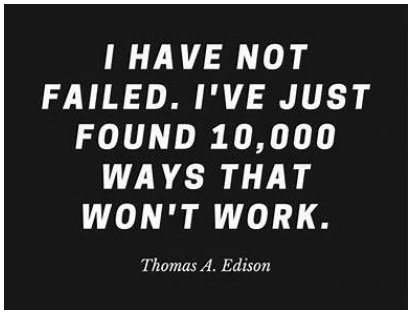
[25 U.S.C. § 1915]

ACTIVE EFFORTS ARE REQUIRED UNDER ICWA

- 25 U.S.C. § 1912(d): Any party seeking to effect ... **termination of parental rights** to an Indian child under State law shall satisfy the court that **active efforts** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.
- "**ICWA provides more limited recognition of the child's best interests**. That standard appears only in section 1902, which declares a national policy 'to protect the best interests of Indian children' by establishing minimum standards for removal. Thus, in our view the **active efforts requirement is not excused even if requiring such efforts may not further the best interests of an Indian child** in a particular case." In Re: N.B., No. 06CA1325.
- Active efforts are required of DHS, GAL, the court, and even a stepparent! (In Re: N.B., No. 06CA1325: "Therefore, we conclude that the burden of proving fulfillment of the **active efforts requirement applies to private petitioners such as stepmother**. We express no opinion whether a private petitioner must make those efforts directly.)

BEWARE YOUR BIASES

- **Bias:** a tendency, trend, inclination, feeling, or opinion, either in favor of or against a particular thing
- **Racial bias**
- **Gender bias**
- **Hindsight bias:** perceiving past events as more predictable after they happened – "I knew it all along effect" – leads to false confidence in predicting the future
- **Confirmation bias:** favoring information that confirms your belief
- **Availability bias:** thinking information we can quickly recall is more valid, even if it's not the best representation of the topic or idea
- **Anchoring bias:** relying too heavily on the first piece of information received and basing all subsequent opinions on this fact
- **Halo effect:** allowing impression of one domain to influence overall impression
- **Status quo bias:** the preference to keep things in their current state, making us more resistant to change
- **Bandwagon effect:** believing something because everyone else does

A FEW FINAL THOUGHTS…

- The search for kin and permanency looks different with every set of facts, so be creative.
- Ask for the relative affidavit – and pursue it.
- Ask for another diligent search – and follow up. Circumstances can change, so ask again!
- Recruit the CASA to do some digging.
- If out-of-state kin is a possibility, ask for the ICPC EARLY ("expedited ICPCs" never are) (GRID pp. F209-F217). You don't want to scramble for approval later.
- Avoid appellate pitfalls!
- Departments don't raise kids, families do. File motions to hold DHS accountable for keeping kids connected to family.
- Decisions we make today impact kids for life, and even generations, so look harder!