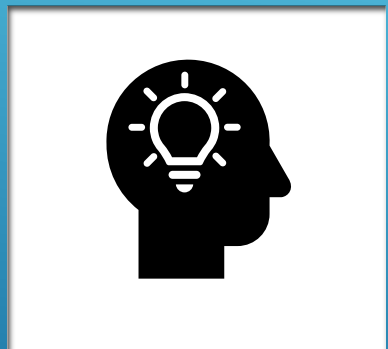


# PARENTING TIME WHILE WITHSTANDING APPEAL AND PRESERVING THE RECORD

- ▶ Presented by:
- ▶ Alison Bettenberg, JD, CWLS
- ▶ Mae Moorhead, BA



# INTRODUCTIONS & ROADMAP

- ▶ Intros:
  - ▶ Alli Bettenberg, GAL and member of Appellate Litigation Team
  - ▶ Mae Moorhead, Case Consultant
  
- ▶ Roadmap
  - ▶ The Why's of parenting time
  - ▶ Types of Parenting time
  - ▶ Expectations in parenting time
  - ▶ Parenting time decisions in light of the A.A. case
  - ▶ Reducing/restricting or stopping parenting time
  - ▶ Preserving the record & your Reasonable efforts finding
  - ▶ Application for GAL's in practice
  - ▶ Questions

## THE WHY'S OF PARENTING TIME

Parenting time is critical for children & an essential component of the treatment plan

- ▶ Maintaining or establishing a bond with their parent
- ▶ Maintaining or establishing a secure attachment
- ▶ Knowing parents are safe
- ▶ Assists in child's stability when away from parent
- ▶ If siblings are separated, allows for this contact as well

## TYPES OF PARENTING TIME

### Therapeutic Supervised Parenting time

- Most intense modality with a therapist present

### Supervised at a Department of Human Services or agency

- In person supervision
- Video supervision
- Can include feedback sessions
- Level systems designed to address issues and progress inside the visits themselves and to allow for flexibility in visit and location
- May include additional supervised "contacts" such as phone/video chats
  - NOTE parenting time in time of COVID fell under these types of contact

# WHO SUPERVISES PARENTING TIME IN YOUR JURISDICTION?

- ▶ A parenting time program/unit in DHS?
- ▶ Contracted agency?
- ▶ Caseworker?
- ▶ You, the GAL or CC (oops!)

## TYPES OF PARENTING TIME

### Kin Supervised Parenting Time

- Gives flexibility in location
- Often increases frequency
- Data collection/Feedback is not as extensive
  - Consider having kin trained and ensure they know the parameters and what they are to be reporting

### Unsupervised

- In community or at parents home
- Is someone checking in during this time?
- No in parenting time data collection or feedback, only from before/after visits

## EXPECTATIONS IN PARENTING TIME

**Sobriety** - considerations might be different if the visit is supervised at DHS versus kin.

- ▶ Can the parent be safe in the visit?
- ▶ Is it their “normal”
- ▶ When can conditions around sobriety in and outside visits cause reasonable efforts issues (more to come on that in A.A. discussion)
- ▶ Availability of monitoring before visits

## EXPECTATIONS IN PARENTING TIME

**Consistency** – this may have significant impact on some children and less on others

- ▶ Lack of consistency which results in a suspension of parenting time
- ▶ Are there other ways to demonstrate consistency in other areas before involving the child if they have severe reactions
- ▶ Consider the impact of stopping and starting parenting time

## PEOPLE IN RE INTEREST OF A.A. 2020 COA 154

- ▣ The Court of Appeals reviewed the entire record (not just the TPR hearing) to substantiate the Reasonable Efforts finding at termination related to the parent's fitness finding under C.R.S. 19-3-604(2)(h). Court of Appeals held there was not evidence in the record to support a finding of reasonable efforts.
  - ▣ Practice tips
    - ▣ Ensuring that reasons for suspension, reduction or level of supervision is in the record early on is imperative and that this is included in any appellate designation of record.
    - ▣ Findings in the TPR hearing also need to be complete.
- ▣ Issues around standard of review are also a large part of case but Supreme Court denied Cert on this case and played a part in the holding.

## PEOPLE IN RE INTEREST OF A.A. 2020 COA 154

- ▣ Court Suspended Parenting Time early in case for Mother
  - ▣ Court required Mother to demonstrate sobriety for 2 weeks to have parenting time but did not tie this condition to the children's needs and there was no moderate approach taken to mitigate the sobriety concerns short of suspension.
  - ▣ Court of Appeals found that condition to not be related to children's needs and that
- ▣ The juvenile Court also suspended Father's parenting time due to concerns for the children, however, because the Court of Appeals felt this was not established in the record, they also found no reasonable efforts regarding Father.

## REASONABLE EFFORTS & TREATMENT PLAN COMPONENT

**C.R.S. 19-3-208(2)(a)** – refer to visitation which should be designed to promote the health, safety, and well-being of the children; facilitate the speedy reunification of parents and children; and promote the best interests of child.

***People in Interest of D.G.***, 140 P.3d 299, 302 (Colo. App. 2006) – the child's health and safety are the paramount concerns in determining whether the services, including visitation, are necessary and appropriate.

- ▶ Court cannot delegate decisions regarding parenting time to third parties, such as GAL/Caseworker
  - ▶ *People in Interest of D.G.*, 140 P.3d 299, 302 (Colo.. App. 2006)
- ▶ Court can have experts to devise plans and make recommendations as to visits as long as (1) orders are subject to review; (2) the court retains the decision-making authority in the case
  - ▶ *People in Interest of B.C.*, 122 P.3d 1067, 1071 (Colo. App. 2005)
- ▶ Crafting an order that allows for changes that meet children's needs
  - ▶ Cannot be too restrictive of parenting time absent an active safety issue in a visit, need a motion to restrict parenting time if that is what is needed.
- ▶ Appellate considerations for agreement/lack of objection to an order allowing the caseworker and GAL to determine parenting time in trial court

## COURT "DELEGATION" OF PARENTING TIME TO THIRD PARTIES

## REDUCTION IN PARENTING TIME

- 1) Reduction of Parenting Time
- 2) Change of Supervision Level
- 3) Stopping Parenting Time



- ▶ Court findings as to the children's needs in parenting time
- ▶ Evidence of mitigation efforts prior to suspension of time
- ▶ Active court oversight and ongoing findings on any restriction or mitigation efforts
  - ▶ Note: while Father in AA did ask for a finding on the delegation issue but the COA did not address this.

## WAYS TO AVOID THE ISSUES OF THE AA HOLDING



## CHALLENGES FOR GAL'S

- Trial court versus appellate court and how RPC in trial court can in essence set up the later issues raised for error
- Making decisions to avoid a reversal which affects whether our decisions are to avoid that versus what is best for the child
- Increasing litigation with motions and this increases adversarial nature of case.
  - Use good conferral/discussion with RPC to try to strategize to how to address parenting time concerns without a hearing
- Use of Experts/Case Consultants to help with assessment of whether visits

# RESOURCES

THE GRID – updated visitation sheet

OCR Motions Bank - new Motions to address this will be loaded there

Litigation Support - the litigation support team is here to help and strategize



## QUESTIONS?

Alli Bettenberg, [abettenberg@bmalawco.com](mailto:abettenberg@bmalawco.com)

Mae Moorhead, [mmoorhead@bmalawco.com](mailto:mmoorhead@bmalawco.com)