



2009 Nebraska Children's Summit

by Kelli Hauptman

On September 9, 2009, four hundred professionals involved in abuse and neglect cases convened in Grand Island to attend the 2009 Nebraska Children's Summit, hosted by the Through the Eyes of the Child Initiative and funded by the Nebraska Court Improvement Project. Begun in 2006, the Through the Eyes of the Child Initiative is a project of the Nebraska Supreme Court and Chief Justice Michael Heavican, and aims to improve court processing in abuse/neglect cases, in part through the activities of 27 multi-disciplinary teams across the state being led by judges with juvenile court jurisdiction. The 2009 Children's Summit was the follow-up to the inaugural Children's Summit held in 2006 in Nebraska City.

Over 6000 children are currently in foster care in Nebraska. Until recently, Nebraska had the highest rate in the nation of children in out-of-home care. Due to busy court calendars, attorney conflicts, missing court reports and other issues, court proceedings have contributed to delays in achieving permanency. Between April 2008 and March 2009, the median stay in foster care was 12.8 months and the median time to adoption was 32.6 months. Delays in proceedings, whether it be through a continuance or an ill-prepared attorney, means the child further languishes in foster care.

In opening the Children's Summit, Chief Justice Heavican noted the court's role in decreasing

the time to permanency for children in foster care, specifically in tightening court hearing time frames, improving practice and ensuring accountability of the professionals involved in the case. Five main areas to be directly impacted by court conduct were focused on at the Summit: parenting time (i.e., visitation), reasonable efforts, children attending court hearings, permanency hearings and using ADR/mediation. The remaining portion of this article will discuss these concepts and their relevance to judges and attorneys.

Parenting Time

As research has shown that parenting time is associated with shorter foster care placements and higher rates of reunification, courts have taken a more active role in addressing parenting time in abuse/neglect cases. Frequent, meaningful, developmentally appropriate parenting time protects the child's attachment and security with his or her parent and also keeps parents engaged in their ongoing parenting role. Best practices contend that the judge should take an active role in determining appropriate parenting time, and not delegate the role to one party. Guardians ad litem also hold the crucial role of advocating for the best interest of the child as it relates to parenting time and should actively work on establishing parenting time that will ensure



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the child's safety and promote permanency.

The courts have already taken active steps in addressing this issue. In 2009, a subcommittee of the Supreme Court Commission on Children in the Courts led by Judge Linda Senff approved Parenting Time Guidelines to be used in abuse/neglect cases. The Hall County team led by Judge Philip Martin also drafted a Parenting Time Protocol to be used by attorneys and other parties in abuse/neglect cases. These materials were highlighted during the Summit. Sibling contact was also frequently discussed at the Summit, as foster children place the utmost importance on maintaining sibling bonds, especially when placed in separate foster homes.

Reasonable Efforts

For the Department of Health and Human Services (DHHS) to receive federal funding for foster care, the court must find that reasonable efforts were and are being provided to prevent removal, promote reunification, and finalize another permanency plan when reunification is not possible. This requirement is codified into Nebraska law under Neb. Rev. Stat. section 43-283.01(2). Furthermore, Neb. Rev. Stat. section 43-532 provides that "[w]hen children and families require assistance from a department...reasonable efforts shall be made to provide such assistance in the least intrusive and least restrictive method consistent with the needs of the child and to deliver such assistance as close to the home community of the child or family requiring assistance as possible."

In his Plenary at the Summit, Judge Michael Key of the National Council of Juvenile and Family Court Judges stated that through the life of the case judges have the duty to monitor whether reasonable efforts are being made and have the obligation to make specific findings in the affirmative or negative. Guardians ad Litem should be advocating for a no reasonable efforts finding in those cases where reasonable efforts are not being made. If the parent wishes to have the child returned to the home, parents' attorneys should also be advocating for appropriate and timely services for their client and should use the reasonable efforts requirement as a tool in accessing services.

Reasonable efforts may include a variety of services, including housing, transportation, meaningful parenting time, mediation services and others. However, as over 80% of abuse/neglect cases involve substance abuse or mental health issues, the issue of reasonable efforts typically revolves around whether DHHS is providing timely and appropriate treatment to the parent.

With delays in conducting evaluations and waiting lists for treatment, the court and parties must often address whether failure to initiate timely treatment is itself a failure to make reasonable efforts. Recent reforms by DHHS in delegating service coordination and delivery to private agencies, and highlighted at the Summit by four judges from Kansas who have experienced agency services privatization, make court and oversight on provision of services and treatment all the more important.

The type of efforts that are reasonable also varies case by case. For example, as Judge Douglas Johnson of the Separate Juvenile Court of Douglas County presented at the Summit, services for the special needs of infants and toddlers, such as increased parenting time and parent-child relationship therapy, must be provided to ensure their well-being.

Children Attending Court

The Opening Lunch of the Children's Summit featured a video presentation of Nebraska foster youth speaking about their experiences in the foster care system. A common theme was their exclusion from court proceedings and their desire to be

more involved in and understanding of their case. Many local teams across Nebraska have now established protocol for children attending abuse/neglect court proceedings. A recently completed Nebraska Court Improvement Project study from Lancaster County that addressed children's attendance at court was presented at the Summit. In summary, the study found that (1) attendance increased children's views of judicial fairness and trustworthiness, their knowledge of the case and reported levels of comfort in talking to their Guardian ad Litem, and (2) interactions with the judge

at the hearing was extremely meaningful to children, with increases in comfort level, understanding what is happening at the hearing, and wanting to be in attendance at future hearings in instances where the judges asked children questions or were encouraging. The Separate Juvenile Court Judges of Lancaster County held a panel presentation at the Summit where they discussed their experiences with children attending their court hearings. Judges may need to make special accommodations to make the court process more child-friendly and guardians ad litem should be speaking with the youth before the hearing to discuss what to expect and after the hearing to explain what happened.

Permanency Hearings

In Nebraska, a Permanency Hearing is required by federal law to be held at 12 months after the child enters foster care to determine what the permanency plan will be, namely reunifica-



Supreme Court Chief Justice Michael Heavican, Judge Douglas Johnson & Judge Wadie Thomas.

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tion, guardianship or adoption. However, attorneys, caseworkers and others involved with the child at this critical juncture have, in many cases, not given the Permanency Hearing the focus, intensity and preparation required by law and necessary for the child's well-being. Instead, the 12-month Permanency Hearings have often been a routine review of the events since the family was last in court. Judge Linda Porter of the Separate Juvenile Court of Lancaster County addressed the differences between review hearings and permanency hearing at the Summit, noting that the court should be making findings as to the appropriateness of the permanency plan and the timeline in which the permanency plan will be accomplished. Retired Judge Joanne Brown of California spoke of the importance of each party's role in ensuring that permanency hearings are meaningful.

Specific efforts have been made in Nebraska to make Permanency Hearings more meaningful, including the development of Permanency Pre-Hearing Conferences discussed below and the creation of court order forms that specify the findings to be made at the Permanency Hearing.


ADR/Mediation in Abuse/Neglect Cases

The use of alternative dispute resolution in abuse/neglect cases continues to expand, from the development of facilitated Pre-Hearing Conferences held prior to the Protective Custody Hearing to the use of other types of mediation at later stages in the proceedings. At the Children's Summit, two more recent types of facilitation were presented: Permanency Pre-Hearing Conferences and Pre-Hearing Termination of Parental Rights Conferences. These facilitations are held prior to the Permanency Hearing and trial on termination of parental rights, respectively, and provide the parties with a forum to discuss the issues. An agreement may be reached but need not. Parents are represented by counsel during facilitations and the guardian ad litem is also present to advocate for the child's best interests. All facilitations are governed by Neb. Rev. Stat. section 43-247.01 which holds that all discussions held during facilitations are confidential and privileged.



Judge John Hendry speaks at the 2009 Nebraska Children's Summit.

At the conclusion of the Children's Summit, Chief Justice Heavican announced the new priorities of the Initiative voted upon by the attendees, namely: (1) to reduce the time to reunification (for reunified children), (2) to improve systems effectiveness with parents with substance abuse issues, and (3) to improve the use of parenting time to improve permanency. These Priorities are the center of focus of teams across the state and in the activities developed on a statewide level. The Summit theme of *Action to Impact* will also continue to be addressed through the monitoring of case progression timelines to ensure that the Initiative's efforts are truly improving the permanency and well-being of children in foster care.

For more information, go to the Through the Eyes of the Child Initiative website at www.throughtheeyes.org or contact Kelli Hauptman, Staff Attorney, at khauptman2@unl-notes.unl.edu or 402-472-3927. 


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