# APPELLATE PRACTICE TO STRENGTHEN YOUR PARENT ADVOCACY

Hon. John R. Rodenberg
Minnesota Court of Appeals

**TOP PRIORITY:**

**Know and follow the timing rules**

# Post-trial motions and appeal

| Action | Rule | Timing | From What Event |
|---|---|---|---|
| **Appeals** | | | |
| **Appeal** | 47.02, subd. 2 | 20 days | • Service of notice of filing of final order by court administrator<br>• In case of post-trial motions, from service of notice of filing of the order disposing of the last post-trial motion |

# Post-trial motions and appeal

| Action | Rule | Timing | From What Event |
|---|---|---|---|
| **Post-trial motions** | | | |
| **Post-trial motion** | 45.01 | 10 days | • Service of notice of notice of filing<br>• Response, if any, due within 5 days of filing of service of post-trial motion |
| **Hearing, if any, on post-trial motion** | 45.01 | 10 days | • Filing of post-trial motion |
| **Ruling on post-trial motions** | 45.05 | 10 days | • Conclusion of hearing on motion |
| **Motion for relief from final order. Reasons for motion:**<br>• **Mistake, inadvertence, surprise, or excusable neglect;**<br>• **Newly discovered evidence;**<br>• **Fraud;**<br>• **Judgment is void;**<br>• **Any other reason justifying relief from the operation of the order** | 46.02 | 90 days | • Service of notice by court administrator of filing of order |

# Post-trial motions and appeal

| Action | Rule | Timing | From What Event |
|---|---|---|---|
| **Petitions or motions to invalidate proceedings under ICWA** | | | |
| **Petition or motion to invalidate under the Indian Child Welfare Act**<br>• **Motion is brought in pending juvenile protection matter;**<br>• **Petition is brought in juvenile protection matter where jurisdiction has been terminated** | 46.03, subd. 1 | No time stated in rule | See 2008 Advisory Committee Comment to Minn. R. Juv. Pro P. 46 on:<br>• Grounds<br>• Time limit<br>• Available relief |
| **Hearing on motion or petition to invalidate under the ICWA** | 46.03, subd. 3 | 30 days | • Filing of petition or motion |
| **Ruling on motion or petition** | 46.03, subd. 4 | 15 days | • Conclusion of hearing |

# Appeal

- Appeal shall be taken within 20 days of service of notice *by the court administrator* of filing of the court's order

- If a "timely and proper" post-trial motion has been served and filed, the time for appeal runs from notice of filing by the court administrator of the order disposing of the *last post-trial motion*

# Post-Trial Motions

- Must be served within 10 days
- Responses must be made within 5 days
- If the district court grants a hearing on a post-trial motion, the hearing must be held within 10 days of the date the motion was filed
- Rule 46.02 allows for relief for mistake, inadvertence, excusable neglect, newly discovered evidence, fraud and the like within 90 days following the court administrator's service of the notice of filing

# ICWA Proceedings

- No time limit on petitions or motions to invalidate actions for non-compliance with ICWA
- Hearing must be held within 30 days
- Ruling must be made within 45 days of the hearing

# Percentage of TPR appeals dismissed involuntarily ranges from ***10% to 20%*** every year

| Year | Appeals Filed | Decided | Dismissed – Not Stipulated – Entire Case* |
|---|---|---|---|
| 2011 | 37 | 34 | 4 |
| 2012 | 42 | 39 | 5 |
| 2013 | 56 | 46 | 6 |
| 2014 | 36 | 34 | 5 |
| 2015 | 70 | 41 | 14 |

*Failure to timely file appeal, failure to serve all parties, failure to file proof of service, etc.

**PRIORITY:**

# Understand the applicable standard of review

- District court findings of underlying or basic facts are reviewed for clear error, in light of the clear-and-convincing standard of proof.

*In re Welfare of J.R.B.*, 805 N.W.2d 895, 899 (Minn. App. 2011)

- District court determination of whether a statutory basis for termination has been shown is for abuse of discretion.

*Id.* at 899-902

- District court abuses its discretion if it misapplies the law.

*Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. App. 1997)

- Review of a district court's best-interests determination is for abuse of discretion.

*J.R.B.*, 805 at 905

- "Because the best-interests analysis involves credibility determinations and is 'generally not susceptible to an appellate court's global review of the record,' we give considerable deference to the district court's findings."

*In re the Welfare of the Child of: J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012)

# Take-away messages for appellate briefing

- Arguing that the record would support findings different than those found by the district court is exceedingly unlikely to meet with success.
- The district court's best-interests findings will almost always be affirmed.
- If a district court misapplies the law, you may find success on appeal.

**PRIORITY:**

# Understand the agency's obligation

## Agencies must:

- Assess a parent's abilities relative to ***conditions that actually affect parenting***.
- Make reasonable efforts to reunify, "beyond mere matters of form so as to include real, genuine assistance . . . ." The agency ***actually has to try***.
- In ICWA cases, the efforts must be active.

**PRIORITY:**

**Make a record in district court regarding reasonable efforts**

If the parent's response to everything during the case was "leave me alone," it is going to be hard to argue on appeal that the agency failed to make reasonable efforts at reunification.

- Better to have requested assistance for things that are difficult or burdensome (e.g., bus passes or childcare to attend assessments/appointments) rather than "I won't do those things"
- Better to request elimination of "case plan" items that have no bearing on abilities to parent (e.g., getting a GED)
- When the agency is not providing services or things you think are reasonable, clearly request ***on the record*** that the agency provide those things

# PRIORITY:

## Understand the “bypass” provision

Reunification efforts are not required under Minn. Stat. § 260.012 in cases where:

1. The parent has subjected a child to **egregious harm**
2. **Prior involuntary termination** of rights of the parent to another child
3. **Abandonment**
4. Custodial rights to another child have been **involuntarily transferred**
5. **Reunification would be "futile and therefore unreasonable"**

2, 3 and 4 are essentially binary questions – probably no basis for district court review beyond documents in the file.

Egregious harm –

Must be determined by the court

Minn. Stat. § 260.012

Statute refers to a **prima facie case** being found by the court

- Open Question: Whether, in a case where the petition ***alleges*** egregious harm, parent is entitled to a hearing to ***rebut*** that prima facie case as part of the parent's right to reasonable efforts to reunify

"Futile and unreasonable" efforts are not necessary under Minn. Stat. § 260.012

**District court** – not the agency – **must make this finding**.

*In re Welfare of Children of D.E.T.*, Nos. A13-1148, A13-1164 (Minn. App. Nov. 27, 2013) *review denied* (Minn. Dec. 31, 2013)

Even where there has been a prior involuntary termination, do not presume that you can't overcome the presumption of parental unfitness.

- "[T]he presumption is easily rebuttable."
- The presumption only shifts the burden of production. The parent need only produce "enough evidence to support a finding that the parent is suitable 'to be entrusted with the care' of the children."
- "[T]he juvenile court also must independently find in each case, even with a presumption of unfitness, that termination is in the child's best interests."

*Welfare of the Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014)

# DO

- Timely serve and file post-trial motions and appeals

# DO

- Timely serve and file post-trial motions and appeals
- Focus on whether the district court made errors of law

# DO

- Timely serve and file post-trial motions and appeals
- Focus on whether the district court made errors of law
- Determine and argue whether reasonable/active efforts were provided toward reunification

# DO

- Timely serve and file post-trial motions and appeals
- Focus on whether the district court made errors of law
- Determine and argue whether reasonable/active efforts were provided toward reunification
- Argue failures to obtain district court approval of "bypass"

## DO

- Timely serve and file post-trial motions and appeals
- Focus on whether the district court made errors of law
- Determine and argue whether reasonable/active efforts were provided toward reunification
- Argue failures to obtain district court approval of "bypass"

## DON'T

- Reargue facts as found by the district court unless the record will not support the findings made

## DO

- Timely serve and file post-trial motions and appeals
- Focus on whether the district court made errors of law
- Determine and argue whether reasonable/active efforts were provided toward reunification
- Argue failures to obtain district court approval of "bypass"

## DON'T

- Reargue facts as found by the district court unless the record will not support the findings made
- Reargue best interests in most cases

## DO

- Timely serve and file post-trial motions and appeals
- Focus on whether the district court made errors of law
- Determine and argue whether reasonable/active efforts were provided toward reunification
- Argue failures to obtain district court approval of "bypass"

## DON'T

- Reargue facts as found by the district court unless the record will not support the findings made
- Reargue best interests in most cases
- Concede that the presumption of unfitness precludes preservation of parental rights

Thank you

* * * *

Questions