

THE KINSHIP PREFERENCE IN VERMONT'S NEW JUVENILE JUDICIAL PROCEEDINGS ACT*

Next in line behind the noncustodial parent in the order of custodial preference found in Section 5308 are certain relatives (grandparent, great grandparent, aunt, great aunt, uncle, great uncle, stepparent, sibling or step sibling) followed by custody to “another relative or person with a significant relationship with the child.”

This provision is a marked departure from prior practice where custody was more likely to be transferred to DCF with DCF placing the child with relatives as licensed foster parents. DCF has long had a policy of preference for kinship placements for children in foster care. Unfortunately, as was true with absent fathers, appropriate kin were too often not being identified early enough in the court process. The current statute changes that by requiring DCF to come to the temporary care hearing with information about potential kinship placements and their suitability to care for the child.

However, the statute goes further by creating a preference for a transfer of custody to kin over a transfer of custody to DCF even in cases where it is DCF's intention to place the child with kin. The reason for this goes back to one of the main challenges presented to the revision committee which drafted the proposed legislation. One of the major controversial issues facing the committee was whether the courts should have the authority to dictate placement of a child in DCF custody. As Judge Davenport pointed out in her interview with Justice Skoglund, the committee chose to take this issue off the table in order to be able to achieve consensus on the draft proposal. Many on the committee did not want to leave the decision regarding kinship placement in DCF's sole discretion. Others believed that DCF as a child's custodian must have the discretion to place the child where the agency sees fit. It was the consensus of the committee that this proposal maintained the current balance of power between DCF and the courts over children in custody while at the same time ensuring that children removed from their parents would end up living in the homes of suitable kin whenever possible.

This legislative provision also has the incidental effect of substantial cost savings to the state. According to data gathered by Lynn Granger, Coordinator for Vermont Kin as Parents, it costs the state on average \$23,000 per year to maintain a child in foster care. While it is true that a relative taking custody of a child may be eligible for a RUFA grant,ⁱ there is a considerable discrepancy between the amount of a RUFA grant and a foster care subsidy, with that difference increasing substantially with each additional child in care.ⁱⁱ Moreover, children in DCF custody have a right to services; children in the custody of relatives only have a right to a referral for services. When it comes to obtaining access to DCF contracted services, the provision of such services for children in kinship custody is made only at the Commissioner's discretion and dependent on available funding. Currently Family Time Coaching, DCF's new initiative to help parents reunify with their children, is available only for families whose children are in DCF custody.

The list of services and costs automatically covered for children in DCF custody and their families but not for those in kinship custody includes: DCF social worker or contracted assistance to kin in negotiating family issues and parent child contact, monitoring progress under the terms of the case plan (unless there is a protective supervision order), filing and prosecuting a TPR petition, arranging for and covering the costs of adoption, paternity testing, reimbursement for transportation to school and medical appointments for the child, full reimbursement for child care expenses, respite care, caregiver training, and post-adoption assistance.

The overall goal for this new legislation is to improve outcomes for abused and neglected children, including providing them with secure and stable homes. However, the stability of kinship placements is inextricably linked to the amount of support given to the kin as caregivers. Research on stability of kinship care suggests that rates of disruption are sensitive to both the level of financial support and the availability of post-discharge services to families. For example, in Texas, which does not have subsidized guardianship and where little in the way of post-discharge services are provided, a study found disruption levels as high as 50% for children discharged from foster care to the physical custody of kin.

In contrast, available data indicate that there are relatively few disruptions (2-3.5%) when kin are appointed as legal guardians and are provided with financial subsidies and post-permanency support services.ⁱⁱⁱ

Children who have been abused and neglected have extraordinary needs and it often requires extraordinary skill and resources to care for them. These children need intensive services and a stable, secure environment in which to heal. Without that, these- our most vulnerable children- could grow up to become our state's greatest liability.^{iv}

Judge Davenport is correct in saying that these are tough economic times. As she states: "The needs of children will be greater than ever and our resources to provide for those needs will be smaller than ever." How we choose to allocate those resources to address the needs of abused and neglected children should be a legislative decision. It is neither fair nor wise to allow for such a huge discrepancy in financial support and services to be based not on the needs of the individual child and family but rather on the serendipitous availability of kin willing to take custody of these children.

Practice Tips

Someone needs to explain to potential kinship caregivers the ramifications of taking custody of the child vs. becoming a foster parent for the child. If DCF is not able to tell kin whether they are licensable as foster parents at the time of the temporary care hearing, that hearing should be continued until such time as DCF knows whether they can license the relatives as foster parents and are willing to place the child with them.

The advantages of having custody of the child are obvious: 1) the relative with custody has the legal decision-making authority over the child subject only to possible protective supervision by DCF; and 2) the child cannot be removed from that relative's home without a modification of the court order. The disadvantages are not as immediately apparent. The relative needs to understand that, depending on the terms of any protective supervision order, DCF may not be available to act as a buffer between them and the parent when conflicts arise over parent/child contact and other issues. The relative also needs to understand the significant differences in financial support and services. It is only fair that these relatives be allowed to make informed decisions before they take on the awesome responsibility of caring for these often challenging and troubled children.

If custody is transferred directly to a relative, especially in cases where there is a goal of reunification, it is essential that the court also issue a protective supervision order that requires DCF to monitor compliance with the expectations of the case plan and that requires the relative custodian to sign releases allowing DCF and the child's attorney to have access to information about the child. (Requesting a protective supervision order and releases signed by the parent is also advisable in cases of conditional custody orders issued pursuant to §5308(b)(1) and §5318(a)(1).)

The court may order a transfer of custody to a relative at the temporary care hearing only if the court determines that the "relative is suitable to care for the child. In determining suitability, the court shall consider the relationship of the child and the relative and the relative's ability to:

- (i) Provide a safe, secure, and stable environment.
- (ii) Exercise proper and effective care and control of the child.
- (iii) Protect the child from the custodial parent to the degree the court deems such protection necessary.
- (iv) Support reunification efforts, if any, with the custodial parent.
- (v) Consider providing legal permanence if reunification fails.

These considerations are designed to avoid some of the pitfalls that can occasionally occur with kinship placements:

*Kin may not perceive the negative impact of the home environment on the child's behaviors and join the parent in blaming the child.

* Kin may not believe the allegations of abuse/neglect and therefore may not see a need to protect the child from further abuse/neglect or pressure on the child to recant. In cases of sexual abuse especially, whether or not a caregiver believes the child and is able to support a child's therapeutic needs has a huge impact on that child's ability to heal.

*Kin may agree to take a child as the result of family pressure without a true commitment to caring for the child long-term.

*Kin may undermine reunification efforts if they have a hostile relationship with the parents.

*Relatives themselves may be abusive or neglectful toward the child because they come from the same troubled family background that led the parent to mistreat the child.^v

Despite these possible drawbacks, there is little doubt that kinship placements can be highly beneficial to children. Kinship placements provide children with a familiar environment with people who frequently already love and feel a commitment to them, thereby minimizing the trauma of removal. There is less stigma attached to living with kin than with foster parents. We as practitioners need to do everything we can to ensure that these kinship placements can succeed including advocating for needed resources and services for the child and family.

*Excerpt from *The Practical Implications of the Newly Enacted Vermont Juvenile Judicial Proceedings Act*, by Pam Marsh and Kathryn Piper, VBA Journal, Spring 2009

ⁱ RUFA grant is a Child Only Reach Up grant obtainable through Economic Services. Child support and any income for the child such as Social Security offset the benefit. Caregiver income is not taken into consideration. However, a family that is eligible for food stamps, housing or fuel assistance may find those benefits reduced dollar for dollar because of a RUFA grant.

ⁱⁱ According to data compiled by the Vermont Kin as Caregivers, foster care reimbursement rates for one child range from \$534.90 to \$762.60 compared to a RUFA grant for one child of \$434.00 to \$458.00. For two children foster care reimbursement rates range from \$1,069.80 to \$1,525.20 and RUFA grants for two children range from \$535.00 to \$560.00. The amount of the discrepancy increases with each added child.

ⁱⁱⁱ www.futureofchildren.org, Vol. 14, No. 1, p. 124

^{iv} In a compelling book entitled *Ghosts from the Nursery-Tracing the Roots of Violence*, Authors Robin Karr-Morse and Meredith S. Wiley illustrate the heavy price society pays for child abuse and neglect: “Violent behavior often begins to take root during those [first] thirty three months as the result of chronic stress, such as domestic or child abuse, or through neglect.” P. 15. They go on to state: “Abuse and neglect in the first years of life have a particularly pervasive impact. Prenatal development and the first two years are the time when the genetic, organic, and neurochemical foundations for impulse control are being created. It is also the time when the capacities for rational thinking and sensitivity to other people are being rooted- or not- in the child’s personality.” P. 45. Atlantic Monthly Press, NY, 1997.

^v Fiermonte, Cecilia and Renne, Jennifer, “Reasonable Efforts to Finalize a Permanency Plan for Relative Placement” in *Making it Permanent*, ABA Center on Children and the Law, 2002; Hardin, Mark, “Legal Analysis- Placing Abused and Neglected Children with Kin:Deciding What to do”, 13 ABA Juvenile and Child Welfare Law Reporter 6, August 1994 at 91.
