

Denouement: Termination Hearings & Post-Termination Considerations

Ashley Chase, Esq.

PURPOSE OF THE HEARING

- Purpose of termination hearing is to determine whether the moving party has met the grounds for terminating the parent-child legal relationship.
- Primary consideration must be given to the physical, mental and emotional conditions and needs of the child.
§19-3-604(3).

TIMING OF THE HEARING

- No specific time frame for filing motion.
- Timing of the hearing depends on a number of factors:
 - Federal requirements
 - Date written motion was filed
 - Age of children involved
 - Nature of other pending hearings

TIMING OF THE HEARING

- In cases in which the department is receiving Title IV-E funding to support placement, federal regulations require the department to file motion if the child has been in foster care under the responsibility of the department for 15 of the most recent 22 months unless the child is placed with relatives, the department has documented in the case plan a compelling reason why filing would not be in the child's BI, or the department has not provided timely services necessary for the safe return of the child to the parents. 42 USC §675(5)(E).

TIMING OF THE HEARING

- Hearing cannot take place sooner than 30 days after the date of filing. §19-3-602(1).
- Failure to comply with the 30-day requirement constitutes reversible error. *People in the Interest of C.L.S.*, 705 P.2d 1026, 1028-29 (Colo. App 1985).
- In EPP cases, termination must be held within 120 days of filing the motion unless good cause is shown and the court finds BI of the child will be served by granting a delay. §§19-3-602(1), 19-3-104.

TIMING OF THE HEARING

- Termination may not occur at the same time as the adjudicatory hearing. §19-3-602(1).
- There is no specified minimum time period between the date of a court-approved tx plan and the date a motion to terminate can be filed.
- However, parent must be afforded a reasonable time to comply with an appropriate tx plan before rights may be terminated. *People ex rel. D.Y.*, 176 P.3d 874, 876 (Colo. App. 2007).

TIMING OF THE HEARING

- If basis for termination is that no appropriate tx plan can be devised, then termination hearing may be held on the same date as dispositional hearing as long as the parent has the full opportunity to litigate the issue of whether no appropriate tx plan can be devised. *People ex rel. T.L.B.*, 148 P.3d 450, 455-57 (Colo. App. 2006).

NOTICE REQUIREMENTS

- All parties, including GALs, must receive notice.
- Foster parents, pre-adoptive parents, and relatives with whom the child is placed must also receive notice of the hearing. §19-3-502(7).
- CASAs must be notified. §19-1-209(3).

TERMINATION MOTION

- Motion must allege the factual grounds for termination. §19-3-602(1).
- Must also include, pursuant to §19-1-126:
 - a statement indicating what continuing inquiries the department has made to determine whether the child involved is an Indian child,
 - Information as to whether the child is an Indian child, and
 - the identity of the child's tribe. §19-3-602(1.5)(a).

TERMINATION MOTION

- The motion must include a statement indicating that a grandparent, aunt, uncle, brother, or sister of the child must file a request for guardianship and legal custody of the child within 20 days of the filing of the motion. §19-3-602(1.5)(a)(I.5)

REQUIRED FINDINGS

- The court must make the following findings to terminate the parent-child legal relationship:
 - The child has been adjudicated dependent or neglected.
 - One of three statutory grounds for termination have been met:
 - abandonment;
 - inability to devise an appropriate tx plan to address parental unfitness; or
 - lack of compliance/success with an appropriate tx plan, combined with continuing parental unfitness unlikely to change within a reasonable time.

REQUIRED FINDINGS

- Termination of the parent-child legal relationship is in the child's best interests.
- Less drastic alternatives have been considered and ruled out.
- If ICWA applies, continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

BURDENS OF PROOF

- In considering termination of the parent-child legal relationship, the court must give primary consideration to the physical, mental, and emotional needs of the child. §19-3-604.
- The court may terminate the parent-child legal relationship only if it finds that the statutory grounds have been proven by clear and convincing evidence. §19-3-604(1).
- If ICWA applies, the court must find beyond a reasonable doubt that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. 25 U.S.C. §1912(f); *People ex rel. A.N.W.*, 976 P.2d 365 (Colo. App. 1999).
- This finding must be supported by testimony of a qualified expert witness. *Id.*

POST TERMINATION

- A review hearing must take place within 90 days following termination to review placement efforts and determine the child's disposition. §19-3-606(1)
- GAL must submit a report with recommendations regarding placement, immediate needs, and long term needs. §19-3-606(1)

POST TERMINATION & NOTICE

- Respondent Parents are not entitled to notice. §19-3-608(3)
- Notice is required for all other parties, anyone with whom the child is placed, and the CASA volunteer, if one is appointed. §19-3-502(7), §19-1-209(3)

APPEALS

- Notice of Appeal must be submitted to Court of Appeals within 21 days of Termination Order. C.A.R. 3.4
- Essential to make record in trial court for appellate purposes C.A.R. 1(d)
- Only final orders are appealable §13-4-102; C.A.R. 1(a)

COLORADO COURT OF APPEALS

- Must file the Notice of Appeal and Designation of Record with the Court of Appeals and an advisory copy served on clerk of trial court. C.A.R. 3.4(b)(1)
- Must submit the original and 5 additional copies
- Record on appeal includes district court file, all exhibits, and any transcripts ordered by either party. C.A.R. 3.4(e)

ADDITIONAL FILINGS

- Appellee may file a supplemental designation of record with the Court of Appeals within 7 days after service of the Notice and Designation. C.A.R. 3.4(e)(4)
- Notices of Cross-Appeal and Designation of Record must be filed within 7 days from the date the Notice of Appeal was filed or within the 21 days allowed for filing Notice of Appeal, whichever is later. C.A.R. 3.4(b)(2)

APPELLATE PETITION

- Petition on Appeal must be filed within 21 days after the filing of Notice and Designation. C.A.R. 3.4(g)(1)
- Must file the original signed copy and a CD with the electronic copy of the petition. C.A.R. 3.4 (g)(1)
- Formatting Requirements
 - No more than 20 pages or 6,300 words. C.A.R. 3.4(g)(3)
 - Font must be 14 point or larger, plain, and Roman style C.A.R. 32(a)
 - 12 point font allowed for captions
 - Italics and boldface may be used for emphasis purposes

CONTENT REQUIREMENTS FOR APPELLATE PETITION IN C.A.R. 3.4(G)

- Cover page with information required in C.A.R. 32(d)
- Statement of the nature of the case and relief sought
- Date the trial court order was entered
- Concise statement of material facts
- Concise statement of legal issues presented
- Statement of the legal issue with supporting statutes, case law, or legal authority
- Copies of the following: D&N Petition, Motion to Terminate, Trial Court's Order, and Rulings on Post-Trial Motions
- Certificate of Service
- Certificate of Word Count

APPELLEE RESPONSE

- Must respond within 21 days. C.A.R. 3.4(h)(1)
- Formatting Requirements
 - Cannot exceed 20 pages or 6,300 words C.A.R. 3.4(h)(3)
- Required contents are the same as the Petition requirements
- Must also include copies of the D&N Petition, Motion to Terminate, Trial Court's Appealable Order, and Orders Ruling on Post Trial Motions. C.A.R. 3.4(h)(1)(E)
- No appellant response

SUPPLEMENTAL BRIEFING AND ORAL ARGUMENTS

- Court of Appeals may request supplemental briefs on specific issues raised by either party or noticed by the court. C.A.R. 3.4(j)(2)
- Requests for oral arguments must be filed with the Court of Appeals on a separate, appropriately title document no later than the date that the party's petition or response is due. C.A.R. 3.4(i)
- Each side gets 15 minutes in oral arguments. The G.A.L. my request to have their own time allotted.

APPELLATE PETITION FOR REHEARING

- Party must file within 14 days after Court of Appeal's entry of judgment. C.A.R. 3.4(k)(1)
- Petition Requirements
 - No longer than 6 pages or 1,900 words C.A.R. 40(b)
 - Must state which point of law or fact the Court of Appeals overlooked C.A.R. 25(e)
 - Certificate of Service and Certificate of Word Count Required. C.A.R. 32(a)
- No oral arguments available for Rehearing. C.A.R. 40(a)

APPELLATE COURT MANDATE

- Court of Appeals issues within 22 days following judgment. C.A.R. 3.4(l)
- Mandate is stayed until any pending petition for rehearing or petition for writ of certiorari is resolved. C.A.R. 3.4(l)

WRIT OF CERTIORARI TO COLORADO SUPREME COURT

- Must be filed within 14 days following expiration of time allowed to file the petition for rehearing or from the denial of the petition for rehearing. C.A.R. 3.4(k)(2)
- Must file the original and an additional 10 copies with a Certificate of Service and a Certificate of Word Count. C.A.R. 25, 51(a)
- Formatting Requirements:
 - Must not exceed 12 pages or 3,800 words. C.A.R. 53(a)
 - Comply with formatting and font in C.A.R. 32 (see previous slide)
- Content Required: Advisory list of issues presented, Reference to the judgment and decree of the court, concise statement of grounds for Supreme Court jurisdiction, concise statement of the case including any matters material to the issues presented, direct argument regarding why writ should be allowed, and an appendix including the judgment and opinion of the Court of Appeals and the text of any pertinent statutes or ordinances. C.A.R. 53(a)

CROSS PETITIONS

- Must be filed within 14 days following the filing of the Petition for the Writ of Certiorari. C.A.R. 3.4(k)(2)
- No longer than 12 pages and 3,800 words. C.A.R. 53(b)
- Content, font, and formatting requirements are the same as the Petition for the Writ of Certiorari

OPPOSITION BRIEF

- Writ of Certiorari may be filed by respondent within 14 days after the filing of the Petition. C.A.R. 3.4(k)(2)
- No longer than 12 pages or 3,800 words. C.A.R. 53(a)
- Must comply with C.A.R. 32
- There is no content requirement

REPLY BRIEF

- May file a Reply Brief within 7 days of service of the Opposition Brief. C.A.R. 53(d)
- No more than 10 pages or 3,150 words. C.A.R. 53(d)
- Format must be in compliance with C.A.R. 32