COLORADO

STATUTES: COLO. Rev. Stat. Ann. §19-1-103(89) = definition; § 19-3-702(3.5) (West 2002) 19-3-604(1)(b)(I) (2010) – The state has the responsibility "to provide, purchase, or develop the supportive and rehabilitative services" required to prevent placement or achieve reunification. §1 19-3-100.5 (commitment to make 'reasonable efforts' to prevent the placement of abused and neglected children out of home and to reunify the family whenever appropriate. Use "diligence and care" Colorado Code of Regulations §7.304.21(D)(1)(d) . Among the efforts required of the department are an assessment of the family and the development of a case plan for the provision of necessary services, which may include home-based counseling and referrals to public and private assistance resources. Section 19-3-208(2)(b), C.R.S. 2005.

CASE LAW:

In the Interest of D.G., M.G., and S.G., Children, 140 P.3d 299; 2006 Colo. App. LEXIS 696; Mother appealed the trial court's termination of parental rights. The court of appeals reversed finding that the treatment plan provided that the mother would have visitation, but the mother was only allowed to write letters to her children. The mother was never afforded the opportunity to have personal, face-to-face visitation with her children to demonstrate that she could become a good parent and avoid termination of her parental rights. The trial court erred in approving a case plan that provided for written communication in lieu of visitation services, and the trial court could not delegate the determination of entitlement to visitation to caseworkers, therapists, and others.

In the Interest of K.B. and M.B., Children, 2016 COA 21; 369 P.3d 822; 2016 Colo. App. LEXIS 132 – Father appealed an order terminating his parental rights claiming the department did not provide reasonable efforts to reunify with his child. The appellate court affirmed finding that the department made reasonable efforts to reunite the father with his child but he did not comply with the treatment plan's substantive requirements; his threats against visitation personnel, together with the negative effect that his anger had on the child during visits, led to the suspension of his visits.

People ex rel. S.N-V, 300 P.3d 911, (2010, Colo. App.) – Father appeals the trial court's judgment terminating his parental rights, alleging the agency did not provide reasonable efforts, in particular a full neuropsychological evaluation as part of the treatment plan. The appellate court first permitted father to raise the issue on appeal and rejected the contention that he had not raised the issue at trial and therefore was estopped. However, the appellate court found that the psychological evaluation rendered by an expert hired by the agency was sufficient and that the trial court had not ordered a full neuropsychological evaluation – only authorized it.

People in Interest of E.C., 2010 Colo. App. LEXIS 1584, 259 P.3d 1272 (2010) – The trial court allocated parental responsibilities to the child's aunt. Father appealed – Affirmed. Father did not follow through with his service plan. Father argued no reasonable efforts by the agency, but the appellate court held that issue was waived because father did not bring it up at trial.

People ex rel. A.J.H., 134 P.3d 528 (Colo. App. 2006) – TPR - Affirmed. Father was incarcerated during part of the reunification period. He did some services, but went back to live with his mentally ill wife against court orders. He also did not complete a number of other services. Reasonable efforts finding affirmed by the appellate court.

In the Interest of M.S.H., 656 P.2d 1294 (Colo. 1983) – TPR - Affirmed. The child was injured and then injured again. Removal and TPR affirmed. This was a case involving domestic violence in which the state offered 2 years of services before terminating parental rights.

In the Interest of R.J.A., 994 P.2d 470 (Colo. App. 2000) – TPR - Affirmed. The children were removed because of mother's substance abuse. The case plan included an in-patient program followed by a transitional living program. Mother continued to abuse drugs. The appellate court held that the services were reasonable, but that the mother squandered "the time available to her."

In the Interest of L.B., 254 P.3d (Colo. App. 2011) – Mother appeals the trial court decision to give sole legal custody to father and his parents based on ineffective assistance of counsel. Affirmed.
This was a dependency action based on domestic violence between the mother and her boyfriend, physical abuse, and sexualized behavior by the child. Services were ordered for both parents. Father was given primary custody at the permanency hearing because he had a better support system including his parents. The appellate court held that ineffective assistance of counsel was not a proper ground for appeal since this was not a TPR case, only a custody issue between parents. Although the court made no reasonable efforts findings, the record reveals many efforts by the department to assist parents and child and many efforts were made to finalize the plan. Thus no reasonable efforts finding was necessary.

Mental Health Issues

People in Interest of M. H., 683 P.2d 807 (Colo. Ct. App. 1984) – TPR – Affirmed. Despite the fact that the parent willingly complied with all of the provisions in her case plan, her mental illness (borderline intelligence and a long history of psychiatric hospitalizations) precluded her from ever safely parenting her child.

People ex rel. J.M., 74 P.3d 475 (Colo. App. 2003) – TPR - Affirmed. Reasonable efforts included eleven months of 44 hours of weekly in-home family preservation services. These included hands-on repetitive instruction about parenting skills, nutrition, budgeting, and basic life skills. Services were adjusted to address the mother's developmental disabilities. Mother resisted the services, insisting she was a good parent with appropriate skills.

In re Interest of C.S.M., 805 P.2d 1129, 1131 (Colo. A. 1990) TPR – Affirmed. The evidence demonstrated that the mother (who suffered from a borderline personality disorder) could benefit from inpatient services but only outpatient services were available. All inpatient services rejected the mother because of her mental condition. Interpreting Colo. Rev. Stat. Ann. §19-3-604(1)(B)(I) 2010.

People ex rel. C.T.S.. 140 P.3d 332 (Colo. Ct. App. 2006) – TPR – Affirmed – The father failed to complete treatment or to show up for a psychological evaluation. Reasonable efforts provided, although the agency delayed in scheduling the required psychological evaluation.

ICWA

People ex rel. A.V., 2012 COA 210, 297 P.3d 1019 (Colo. App. 2012), cert. denied, 2013 WL 425974 (Colo. 2013) - TPR – Affirmed. An order terminating the father's parent-child legal relationship between him and his two children was proper because the Department of Human Services made adequate active efforts to prevent the breakup of the Indian family, despite a lack of visitation and the provision of fewer services after March of 2011. Because father's whereabouts were unknown, the Department was not required to provide active efforts to father during that time. Active efforts are required to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family, pursuant to the Indian Child Welfare Act (ICWA), requires more than reasonable efforts to provide or offer a treatment plan in a non-ICWA case, yet active efforts does not mean persisting with futile efforts.

People ex rel. A.R., 2012 COA 195, 310 P.3d 1007 (Colo. App. 2012) TPR – Affirmed in Part, Reversed in Part –TPR - Affirmed. The guardianship was reversed because of a failure to follow the ICWA's placement preferences. Trial court said department used its "best efforts" to reunify the parent and child. This was incorrect as "active efforts" is the proper standard. Nevertheless, the department satisfied the ICWA "active efforts" requirement with its services. The court declined to equate "active efforts" with "reasonable efforts" as the court did in *People in Interest of K.D.*, 155 P.3d 634, 637 (Colo. App.2007). The court concluded that "active efforts" require greater effort on the part of the department than does the reasonable efforts requirement. Active efforts would require the worker to actively assist the client accomplish the goals of the reunification plan. In this case the department arranged and supervised visits both at the mother's apartment and the library, rescheduled visits to accommodate the mother's schedule,

referred the mother to a substance abuse and neuropsychological evaluation, provided a home-based therapist, gave mother vouchers and bus passes, provided resources for obtaining housing, and arranged for participation in the Nurturing Parent Program and attempted to obtain services from parents and teachers.

People in Interest of T.E.R., 2013 COA 73, 305 P.3d 414 (Colo. App. 2013) – A motion to transfer case to a tribal court in Michigan. Denied - Affirmed on appeal – the case was at an advanced stage and the witnesses were in Colorado. The Indian Child Welfare Act's (ICWA's) active efforts standard in termination of parental rights cases requires more than the "reasonable efforts" standard in non-ICWA cases; nonetheless, active efforts under the ICWA does not mean persisting with futile efforts**.**

People ex rel. K.D., 155 P.3d 634 (Colo. App. 2007) TPR – Affirmed. the court held that the trial court did not err in finding that active efforts under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) were made because of the extensive services provide to the father by the county Department of Human Services during two previous dependency proceedings, declaring that while a state must make active efforts under § 1912(d), it need not persist in futile efforts if it is clear that past efforts have met with no success. In other words, the court explained, the court may terminate parental rights without offering additional services when a social services department has expended substantial, but unsuccessful, efforts over several years to prevent the breakup of the family and there is no reason to believe additional treatment would prevent the termination of parental rights. Active efforts may be excused by futility of making or continuing efforts.

Aggravated Circumstances

People In Interest of C.S.M., 805 P.2d 1129, (Colo. Ct. App. 1990), TPR- Affirmed. The appellate court held that parental rights can be terminated without requiring the state to implement a treatment plan. The court explained that Colo. Rev. Stat. § 19-3-604(1)(b) permits the termination of parental rights after an adjudication of dependence or neglect when the court makes a finding, by clear and convincing evidence, that no appropriate treatment plan can be devised to address the parent's unfitness. The statute defines an appropriate treatment plan as one that is reasonably calculated to render a particular parent fit to provide adequate parenting, that relates to the child's needs, within a reasonable time. The court observed that while in many other circumstances the state is required to develop such a rehabilitation plan for parents, Colo. Rev. Stat. § 19-3-604(1)(b) was enacted to avoid requiring the state to proceed with a treatment plan that is doomed to failure. Through this statute, the legislature gave the courts authority, in certain cases involving a parent's emotional or mental illness or deficiency, to decide that no appropriate treatment plan could be devised to treat the parent's problem and successfully reunite the family. In the instant case, the court held that where the mother's borderline personality

disorder had not responded to out-patient treatment and there was no in-patient treatment for her condition, and where even if treatment were available her prognosis was guarded because insight disorders such as hers did not respond well to treatment, the trial court had the authority to bypass a treatment plan and terminate parental rights.

COMMENTS:

"In my prior role as CIP Judge in Residence I visited each of Colorado's 22 judicial districts. During those visits a primary focus was to answer just this question. My findings during my court observations were that there were no requests for no reasonable efforts findings. Judges often made reasonable efforts findings orally while in many jurisdictions the court merely orally adopted DHS recommendations that included the request for reasonable efforts findings. In my stakeholder interviews, almost universally, attorneys suggested that they rarely make requests for no reasonable efforts findings, mostly because they feel like it does little good as judges do not enter such findings. In my confidential recommendations in my reports from the site visits I always recommended that judges make findings orally and that they make litigants aware of the significance of the finding and the requirement of DHS to make reasonable efforts. I encouraged judges and magistrates to make detailed factual determinations of the efforts DHS had made and why these efforts were either reasonable or unreasonable. I also often referred them to your letter in the appendix of the Resource Guidelines regarding the "art" of making no reasonable efforts findings as an appropriate way of exercising our legal authority to move DHS along to enhance the efforts they are making to secure safety, permanency and well-being for all children and to provide procedural fairness for parents."

Email to author from Judge Robert Lowenbach (retired)

Jeanne Kaiser believes that the social service agency in Colorado takes reasonable efforts seriously and provides concrete services.[1]

"The issue of reasonable efforts is rarely raised at the shelter hearing by Respondent Parent's Counsel (RPC) but it is addressed by the court when making findings regarding removal. RPC will ask the court at review or Permanency hearings to find that reasonable efforts have not been made if services are deficient or delayed as well as raising it at TPR. Each DHS report does contain a section where they will detail reasonable efforts that have been made since the last court date. The judicial officers rely upon that and additional information provided at the hearing to make findings at each hearing, especially if the children are out of home. Having said all of

[1]Kaiser, J. "Finding a Reasonable Way to Enforce the Reasonable Efforts Requirement in Child Protection Cases," o*p.cit.,* footnote 70 at p. 132.

that I know that we can still do a better job of ensuring that services are not “cookie cutter” but are designed to best meet the needs of each parent and child.”

Email to author from Judge Karen Ashby, Presiding Judge, Juvenile Court, Denver, Colorado. (now sitting on the Colorado Court of Appeal).