

Finding of No Reasonable Efforts and the Case Plan

PAAC Motions Seminar March 2016
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Topics

- ▶ What are Reasonable Efforts?
- ▶ When and Why You Need a Finding of Reasonable Efforts?
- ▶ Common Scenarios and How They Play Into Reasonable Efforts
 - ▶ Substance Abuse
 - ▶ Domestic Violence
 - ▶ Visitation
- ▶ Practice Pointers
 - ▶ What your client needs to know and what you need to do
- ▶ Sample Motion for Finding of No Reasonable Efforts
- ▶ Let's Play Pretend

What are Reasonable Efforts?

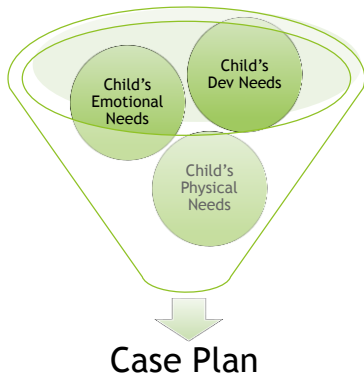
- ▶ Reasonable efforts shall be made to preserve or reunify family.
- ▶ Georgia
 - ▶ OCGA 15-11-2 defines Reasonable Efforts as
 - ▶ Due diligence AND
 - ▶ Provision of appropriate services
- ▶ Federal Law
 - ▶ No codified definition of reasonable efforts
 - ▶ Case by case basis
 - ▶ The Department of Health and Human Services Administration for Children and Families says on their website, “We have not, nor do we intend do define “reasonable efforts”. To do so would be a direct contradiction of the intent of the law.”

A perfect opportunity to argue your definition.

The Facts of the Case Govern the Case Plan

- ▶ Case facts determine case plan goals so why is the child dependent?
- ▶ Always ask: **Why is the child dependent? OR Why can't the child go home TODAY?**
 - ▶ O.C.G.A. 15-11-2 defines a dependent child as “a child who: (1) Has been abused or neglected and is in need of the protection of the court: (2) Has been placed for care or adoption in violation of law; or (3) Is without his or her parent, guardian, or legal custodian.”
 - ▶ The Court of Appeals interprets this to mean that “the primary consideration in deciding whether a child is deprived is the child's welfare, without regard to the fault of the parent.” See In the Interest of R.M., 276 Ga. App. 707, 716 (2005)
- ▶ What that means is it doesn't matter if the parent is homeless, jobless or tested positive for drugs **UNLESS** the parent's homelessness, joblessness or drug use has **AN ADVERSE AFFECT ON THE CHILD**

How Does Reasonable Efforts Fit with a Dependency Case?

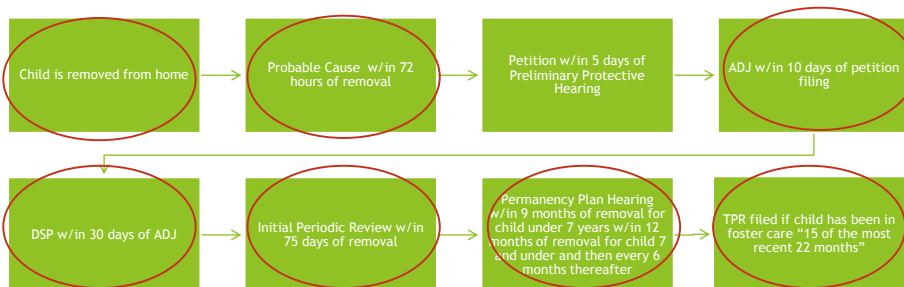


In a perfect world, the Case Plan details what the reasonable efforts (reasonable services) the Department will provide in order to reunify the family.

In our not so perfect world, sometimes there are services the Department should provide to reunify the family that do not make it into the case plan.

In an **imperfect** world, sometimes steps are in a case plan that have absolutely nothing to do with the reasons the child came into custody. (We are all familiar with unnecessary drug screenings.)

Dependency Timeline



- Important to argue early and often.
 - Getting a No Reasonable Efforts finding at a **termination** does not assist your client or their child
 - Arguing this issue helps make the services provided to all of our clients more timely and more relevant

When Does the Court Need to Make a Finding of Reasonable Efforts?

The court shall be required to review the appropriateness of DFCS's reasonable efforts at each stage of the proceedings. O.C.G.A. . § 15-11-202

- ▶ **Prior to the placement of an alleged dependent child in DFCS custody to prevent the need for removing him or her from his or her home.** O.C.G.A. § 15-11-202(a)
- ▶ **At the Preliminary Protective Hearing** O.C.G.A. § 15-11-202(e)(1)
- ▶ **At the Adjudication Hearing** O.C.G.A. § 15-11-202(e)(2)
- ▶ **At the Disposition Hearing** O.C.G.A. §15-11-213
- ▶ **At each other hearing, DFCS has the burden of demonstrating that it has made reasonable efforts to eliminate the need for removal of the child... from their home and to reunify child with their family. OR It has made reasonable efforts to finalize alternative permanent home for a child alleged to be dependent.**

So what... there was a finding of No Reasonable Efforts by the DFCS?

If there is no finding of reasonable efforts to preserve the family in specific orders during a dependency case OR if the court finds that the Department did not make reasonable efforts, then

DFCS LOSES Federal FUNDING!



No Reasonable Efforts to Preserve a Family are Required When...

- ▶ Has subjected his or her child to aggravated circumstances
 - ▶ Abandoned a child or subjected child to torture, chronic abuse, sexual abuse, etc.
- ▶ Conviction of :
 - ▶ Murder of another child of such parent;
 - ▶ Voluntary manslaughter of another child of such parent;
 - ▶ Felony assault that results in serious bodily injury to the child or another child of such parent;
 - ▶ Rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the alleged dependent child or another child of the parent;
- ▶ Is required to register as a sex offender and that preservation of a parent-child relationship is not in the alleged dependent child's best interests; or
- ▶ Has had his or her rights to a sibling of the alleged dependent child terminated involuntarily and the circumstances leading to such termination of parental rights to that sibling have not been resolved.

See O.C.G.A. 15-11-203 for a complete list.

Reasonable Efforts: A Court's View

Courts often factor in:

- ▶ The length of time the child has been in foster care
- ▶ The families' prior involvement with DFCS and the court
- ▶ Whether services are cost effective
- ▶ The parents own treatment history e.g. has the parent successfully treated mental health or drug dependency

The Parent Attorney's Checklist

- ▶ Why can't the children return home today?
- ▶ Will the proposed services help to return the children home?
- ▶ Once services are provided are they effective?
- ▶ Do the services meet the child's developmental needs?
- ▶ If services are needed but not provided, why?
- ▶ Is visitation between parent and siblings provided?
- ▶ Is parent notified and allowed to provide input in decisions involving the child?
- ▶ Will the services prevent further or future DFCS involvement?

Common Scenarios

Reasonable Efforts: Visitation

- ▶ Visitation is **ESSENTIAL** part of the reunification process. Visitation is how you maintain the bond with your child.
- ▶ No standard visitation schedule exists for all children
 - ▶ Infants need frequent and consistent contact with their parents
- ▶ Does more visitation help accomplish case plan goals?
 - ▶ Visitation is where the parents can demonstrate their new parenting skills
- ▶ Transportation issues related to visitation
 - ▶ If parent can provide their own transportation, can they have more visits?

Reasonable Efforts: Substance Abuse

- ▶ What is the impact of the substance abuse on children?
 - ▶ Must be connection between abuse → child's well-being
- ▶ Referrals for treatment
- ▶ Residential treatment that allows children to live with parent
- ▶ Outpatient treatment
- ▶ Parenting programs with a focus on substance abusing parents

Reasonable Efforts: Domestic Violence

- ▶ Must be a connection between the domestic violence and welfare of the child
- ▶ Assist in creating safety plan for abused parent and child
- ▶ Find local DV agencies who can assist with advocacy (filing a TPO) and other services
- ▶ Assist in finding safe confidential shelter
- ▶ Requiring supervised visits with abusive parent
- ▶ Providing secure safe visitation centers

Practice Pointers

Diligence by the Parent

- ▶ You need to lay out YOUR expectations of your client.
- ▶ They need to know that they need to be proactive
- ▶ It's important to have a talk about what they need to do and how important it is to do it in a timely fashion.
- ▶ They need to keep you in the loop. Give you an update every two weeks? Ten days?
- ▶ Help them get organized:
 - ▶ Calendar to make notes
 - ▶ Keep track of all paperwork
 - ▶ Keep track of all conversations. Instruct client to get names, telephone numbers and the role of callers when people call him or her.

Diligence by Parent Attorney

- ▶ Lack of diligence by a parent attorney can make a bad situation worse
- ▶ Lay out the case plan and expectations in a letter to the client(See earlier slide)
- ▶ If the client tells you that DFCS is not providing the services laid out in the plan, you should consider:
 - ▶ Sending a reminder email to the SAAG and the Child Advocate attorney
 - ▶ Sending a follow up a week later if no response.
 - ▶ Still no answer from DFCS?

File a Motion for a Finding of No Reasonable Efforts

Sample Motion: The Facts

- ▶ Case plan:
 - ▶ The case plan was adopted _____, 2016.
 - ▶ The case plan ordered the DFCS to provide services (counseling, parenting aide, drug screen, etc.)
- ▶ To date DFCS has not provided these services
- ▶ What you have done to try to get those services:
 - ▶ Counsel for the Mother emailed SAAG on _____, 2016 regarding that these services had not been provided
 - ▶ Client contacted the case manager on ____, 2016
 - ▶ Sent letters, contacted in person, etc

Sample Motion: The Law

In accordance with OCGA 15-11-202 and the Adoption Assistance and Child Welfare Act of 1980, the Department is required to provide reasonable efforts to reunify the family. Failure to do so by the Department can result in a finding of no reasonable efforts, which suspends the Department's federal funding for the child and requires the Department to pay for the care of the child with state funds. The funding is suspended until such time that the Department shows this Court that it has satisfied the reasonable efforts requirement to reunify the family.

O.C.G.A. § 15-11-2 defines reasonable efforts as due diligence and the provision of appropriate services. Therefore, Mother is requesting that this Court find no reasonable efforts to reunify the family due to the Department's lack of providing services, preserve sibling connections, communicate with Mother regarding the children's placements and consistent visitation to the family to prevent the Department from failing to do so in the future of this case and other cases.

Sample Motion: Prayer for Relief

- ▶ What do you want?

A finding of **no reasonable efforts**
to reunify the family.