

A CRITICAL LOOK AT CHILD PROTECTION: CREATING A NEW NORM: ENGAGING FATHERS THROUGH DIRECT REPRESENTATION IN CHILD IN NEED OF PROTECTION OR SERVICES ACTIONS

2014

Reporter

40 Wm. Mitchell L. Rev. 1143

Length: 6370 words

Author: Cyrenthia D. Shaw+

+ Cyrenthia D. Shaw of Shaw Law Office, LLC, is a civil practice attorney focusing in family law and employment law. Ms. Shaw graduated from Hamline University School of Law in 2002. Since 2012, Ms. Shaw has been a contract attorney with the Hennepin County Public Defender's Office representing noncustodial parents. She has also represented children in child protection matters through the Children's Law Center since 2004. Ms. Shaw previously served on the Children's Law Center Board and is now a member of the Minnesota State Guardian Ad Litem Board.

LexisNexis Summary

... Although the project provides legal representation to male or female noncustodial parents, fathers have primarily requested services. ... A father still married to the child's mother or one who has established, prior to the CHIPS action, a legal parental status in possession of a custody or parenting time order, still has only limited rights in juvenile court, even though the father is not named in the CHIPS petition. ... A father understandably questions why his engagement of county-determined services is necessary when he is not named as the "wrongdoer" in the CHIPS petition. ... It was recognized that poor outcomes for kids could be improved by a systematic change to actively engage fathers from the initial intake and case planning stage to disavow the notion that "fathers are excluded from all levels of child welfare practice; the system is mother focused." ... The father is considered a participant, usually regardless of legal status, and can attend proceedings, but he is limited to the discretion of the court to provide input in the decisions made about the children during the court process, such as placement and future custody. ... If a child is under the age of eight, the statutory timeline requires that a permanency progress review hearing occur at 180 days to review the parent's progress on a case plan and visitation. ... Fathers who do not have custody or failed in their attempts to navigate the family law legal system for parenting time prior to the CHIPS action are deemed absent and considered to have a lack of interest in personal contact with their child. ... A father who is persistent and advocates for resources to assist in temporary placement is an alternative permanent placement option for the child.

Text

[*1143]

I. Introduction

The engagement of fathers in the Child in Need of Protection or Services (CHIPS) process is not a new concept. ¹ Minnesota statutes and rules protect the rights of parents with the stated purpose of juvenile protection to preserve

¹ See [Minn. Stat. § 260C.001](#), subd. 1(b)(1) (2012) ("Juvenile protection proceedings include: (1) a child in need of protection or services matters ..."); see also *id.* § 260C.001, subd. 2 (defining CHIPS as a legal action permitting the state to protect a child's health, safety, and best interests by taking temporary legal custody and providing services to the family).

and strengthen family ties.² Although Minnesota social services agencies offer voluntary [*1144] services to families prior to court involvement, historically noncustodial and nonresident parents are lost in the shuffle.³ Noncustodial parents are further disadvantaged by policies that delay the appointment of legal counsel to noncustodial parents until a secondary action of Termination of Parental Rights (TPR) is commenced,⁴ which generally occurs six to twelve months after the initial CHIPS filing.⁵

In 2012, the Hennepin County Public Defender's Office implemented a pilot project to provide representation to noncustodial parents in juvenile court to engage the parents in the early stages of CHIPS actions.⁶ Legal services are provided to noncustodial parents that voluntarily appear at the court hearing and request an attorney. Although the project provides legal representation to male or female noncustodial parents, fathers have primarily requested services. Hence, the project is referred to as the Father's Project.

A father's ongoing involvement in the child protection process is increased when the father dispels the notion that he is ignored; he has a voice at the counsel table to give input into the legal decisions that affect his child's well-being. An engaged father that participates in his case plan has a greater opportunity to be [*1145] presently active in meeting his child's needs.⁷ Responsible parenting skills are improved upon as the bond between a father and his child is reinforced. Direct legal representation of fathers creates a new norm and expands the options for collaborative resolution in child protection matters.

II. The Responsibility of Parenting

A. Fatherhood

The father has a constitutional parental right under the Fourteenth Amendment.⁸ A father acquires substantial protection by coming forward with interest in personal contact with his child.⁹ In a juvenile protection action,

² Id. § 260C.001, subdiv. 2(b)(3) ("The purpose of the laws relating to juvenile protection proceedings is ... to preserve and strengthen the child's family ties whenever possible and in the child's best interests ...").

³ See Child Safety & Permanency Div., Minn. Dep't of Human Servs., Working with Fathers: A Program Improvement Resource 2-3 (2009), available at <https://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-5575A-ENG>.

⁴ See Parent Legal Representation Workgroup, Report of Children's Justice Initiative Parent Legal Representation Workgroup to Minnesota Judicial Council 12 (2008), available at <http://www.leg.state.mn.us/docs/2009/other/090151.pdf> ("Public defenders were not able to accept appointments to represent non-custodial parents who also are required under federal and state law to be involved in case plans for their children."). In the report, this author recommended that indigent parents have a right to legal representation in CHIPS, TPR, and other permanency cases. Id. at 16-17.

⁵ See Ann Ahlstrom, Children's Justice Initiative, CHIPS to Permanency Timeline (rev. Feb. 2010), available at http://www.mncourts.gov/Documents/0/Public/Childrens_Justice_Initiative/Removal_to_Permanency_Timeline_%28Ahlstrom_Feb._2010%29.pdf.

⁶ Hennepin Cnty. Admin., 2012 Hennepin County Highlights 11 (2012), available at http://www.hennepin.us/files/HennepinUS/Commissioners/Special%20Projects%20&%20Landing%20Pages/2012_Hennepin_County_Highlights.pdf.

⁷ Parent Legal Representation Workgroup, *supra* note 4, at 15 (explaining that attorney representation in child protection cases is critical to assist parents in timely achieving their case plan goals to improve outcomes for children); see also Child Safety & Permanency Div., *supra* note 3, at 2 ("Children benefit if a constructive relationship with their father is maintained and/or promoted. Children are well-served when agencies ... engage ... fathers in case planning and implementation.").

⁸ *Troxel v. Granville*, 530 U.S. 57, 65-66, 68 (2000); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

⁹ See *Troxel*, 530 U.S. at 65-66, 68; Vivek S. Sankaran, Advocating for Constitutional Rights of Nonresident Fathers, in ABA Ctr. on Children & Law, *Advocating for Nonresident Fathers in Child Welfare Court Cases* 1, 7-8 (Claire S. Chiamulera ed., 2009).

Minnesota Statutes separately define a "Custodian" and a "Parent."¹⁰ The inference is that a father with a legally established relationship is provided an opportunity for engagement in building a bond with his child, strengthening family ties, and developing greater awareness of his child based on what the child needs.¹¹ So why do fathers hear legal advocates in juvenile court proclaim that the father doesn't have any rights? A father without direct representation is understandably confused when he is expected to differentiate between his fundamental parental right; his legal parental status, important in juvenile court proceedings; and the custodial rights typically determined in family court to make legal and physical decisions about a child.

[*1146] In Minnesota, the father has two avenues to establish himself as a legal parent.¹² Although an unmarried father may be the biological father of the child, he has no legal rights until he establishes paternity.¹³ A father with the desire to have a legal relationship with his child can do so by executing a Recognition of Parentage ("ROP") form.¹⁴ The ROP is a legal document that requires the mother's agreement and signature.¹⁵ An ROP is proof of legal status as a parent, but it does not determine custodial (decision-making authority) or parenting time (visitation) rights.¹⁶ A recognized father must take further legal action in family court to determine custody and visitation issues.¹⁷ The second path to determine a father's legal parental status is by obtaining a court order in a paternity action.¹⁸ An adjudicated father receives a court order that most likely includes, among other things, a determination about custody and parenting time.¹⁹

The winding road of fatherhood offers additional options for a father to be put on notice of actions that affect his future right to a legal relationship with a child. First, a presumed father has no custodial status to make major decisions about the child's life, but he is entitled to notice regarding an admit/deny hearing in a CHIPS action.²⁰ A man is presumed to be the father when the child was born during marriage or shortly after divorce, a blood or genetic test shows a great probability, he receives the child in his home and openly accepts the child as his biological child, or a Declaration of Parentage was signed.²¹ Also, an individual who **[*1147]** registers with the

¹⁰ [Minn. Stat. § 260C.007](#), subdiv. 10, 25 (2012).

¹¹ *Id.* § 260C.007, subdiv. 25 (stating that a legally established father is a "parent"); *id.* § 260C.001, subdiv. 2 (discussing the purpose of the statute).

¹² *Id.* § 257.54(b).

¹³ Mid-Minn. Legal Aid, *Rights and Responsibilities of Unmarried Parents 1* (4th ed. 2012), available at <http://www.lawhelpmn.org/resource/rights-and-responsibilities-of-unmarried-pare> ("Paternity is the legal term used for being the father of a child."); see [Minn. Stat. § 257.541](#), subdiv. 1.

¹⁴ [Minn. Stat. § 257.75](#), subdiv. 1.

¹⁵ *Id.*

¹⁶ Mid-Minn. Legal Aid, *supra* note 13, at 3, 19.

¹⁷ *Id.* at 4.

¹⁸ [Minn. Stat. §§257.57](#), .66.

¹⁹ *Id.* § 257.66; see also Minn. Dep't of Human Servs., *Fathers and Their Rights in Minnesota* (n.d.), available at http://www.dhs.state.mn.us/main/groups/children/documents/pub/dhs16_178780.pdf.

²⁰ [Minn. Stat. § 260C.150](#), subdiv. 2; Minn. R. Juv. Prot. P. 22.01(b) (defining participants as including "any parent who is not a legal custodian and any alleged, adjudicated, or presumed father"); *id.* R. 32.03, subdiv. 2(b) (requiring notice to identified participants for admit/deny hearing).

²¹ Mid-Minn. Legal Aid, *supra* note 13, at 5-6 (providing that Declarations of Parentage are no longer used since the law changed in 1995 "to allow ROPs to be signed to determine parentage"); see also [Minn. Stat. § 257.55](#), subdiv. 1 (defining "presumption of paternity").

Minnesota Father's Adoption Registry to receive notice prior to a final determination of the adoption of his child is a putative father or possible father.²² The putative father has no legal parental rights to make decisions about the child's day-to-day living. However, the Registry is a resource for social services agencies to locate nonresident fathers.²³

The question remains, when do courts give credence to a father as a parent? Family court procedures provide a platform for a parent that desires full involvement in determining his child's upbringing.²⁴ Even in the educational setting the noncustodial parent's "parental rights" are recognized as being retained based on federal and state law.²⁵ The referenced laws explicitly encourage parental participation and protect both parents' decision-making authority, unless limited by court order.²⁶

In juvenile proceedings a father has no decision-making authority without agreement of the court. A father that appears in a CHIPS action without proof of legal status will be assisted by the social services worker to either execute an ROP or obtain genetic testing.²⁷ However, he cannot seek custody or parenting time in family court until juvenile court jurisdiction ends.²⁸ A father still [*1148] married to the child's mother or one who has established, prior to the CHIPS action, a legal parental status in possession of a custody or parenting time order, still has only limited rights in juvenile court, even though the father is not named in the CHIPS petition.²⁹ Yet advocates generally recognize the marital relationship and are less likely to question the father's engagement in the case. Following the CHIPS adjudication, either by a mother's admission or by a trial that decides that the allegations in the petition warrant the need for services, temporary legal custody is provided to the agency.³⁰ During the pendency of the CHIPS action, temporary physical custody can be bestowed upon the father dependent upon compliance in a case plan or other social services recommendations.³¹ The legal custodial rights do not change on a permanent basis until or unless a determination is made about TPR or the parties voluntarily agree to settle the matter with a transfer of custody.³²

²² Mid-Minn. Legal Aid, supra note 13, at 19; see also [Minn. Stat. § 259.21](#), subdiv. 12 (defining "putative father").

²³ [Minn. Stat. § 260C.150](#), subdiv. 3(a)(3), (c).

²⁴ See Minn. Dep't of Educ. Div. of Compliance & Assistance, Q&A: Parental Rights Retained by Non-Custodial Parent, Minn. Dep't Educ. 2 (Jan. 13, 2009) [hereinafter Q&A], http://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&dDocName=002406&RevisionSelectionMethod=latestReleased&Rendition=primary (summarizing Minnesota law in relation to legal custody court proceedings); see also [Minn. Stat. §§518.003](#), .17, .175 (outlining custody and parenting time rules and procedures in marriage dissolutions).

²⁵ Q&A, supra note 24, at 2 ("Even with an award of sole legal custody, Minnesota law retains certain rights for the non-custodial parent unless the court order makes specific findings to further limit that parent's rights."); see [34 C.F.R. § 300.501 \(2013\)](#); [Minn. Stat. §§518.003](#), subdiv. 3, 518.17, subdiv. 3 (2012).

²⁶ Q&A, supra note 24, at 1-4.

²⁷ [Minn. Stat. § 260C.150](#), subdiv. 3(c) (providing that a "putative father [who] cooperates with genetic testing" may be considered for "day-to-day care of the child"); id. § 260C.219(a)(1) ("The responsible social services agency shall require the nonadjudicated parent to cooperate with paternity establishment procedures as part of the case plan.").

²⁸ See id. § 260C.101, subdiv. 1 ("The juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services ...").

²⁹ Id. § 260C.201, subdiv. 1(a)(1)(i) (stating that the court may order placement of the child with the noncustodial parent, but such "order ... does not confer legal custody on that parent").

³⁰ Id. § 260C.201.

³¹ Id. § 260C.201, subdiv. 1(a)(1)(i)-(iii).

³² See id. § 260C.201, subdiv. 1.

B. Marginalization of Fathers

The Father's Project fills a necessary gap for a father who hopes for continued or increased contact with his child. The legal advocate answers the father's questions, listens to the father's story, discusses setting goals with the father, reviews case planning for the father, and identifies support services in collaboration with the father and the department. A father that enters the child protection process foremost wants to know if he can take his child home as the caretaker. Second, if he cannot provide direct care, the question becomes when he can see his child. Prior to appointment of counsel to directly represent him, the father may receive conflicting information from the county social worker, the mother, or other professionals willing to assist but who represent distinct positions in the process. Without legal representation, a father is discouraged when he appears at court to provide support for his child, and the common feedback received is that he was [*1149] unidentified prior to that court hearing, that he must prove that he has legal parent status, and that he needs to complete testing and treatment based on hearsay or prior criminal records.³³

In CHIPS, the overall goal is reunification with the custodial parent, but the process is meant to be viewed through the lens of the best interests of the child for health, safety, and permanency.³⁴ From the perspective of a noncustodial advocate, without representation, hope for involvement with his child diminishes for the father who sits in the back of the court and hears that he has no juvenile court rights to visit, except at the discretion of the agency or the mother by voluntary arrangement. At counsel table, the father observes legal counsel and unknown professionals, who seem to have authority to discuss the case, and who occasionally refer to the father in third person. At various points in the process the father is asked to meet the social worker and sign forms. Depending on the temperament of the social worker, the father receives some discussion about the documents or is informed in a matter-of-fact manner of the next step. Consistently, a father perceives the child protection system as biased in favor of the mother because he does not have knowledge of the legal process to have his presence validated.³⁵ A father understandably questions why his engagement of county-determined services is necessary when he is not named as the "wrongdoer" in the CHIPS petition.³⁶ Counseling on responsible parenting, as much as the advocacy of a legal position, is a vital skill when representing fathers in order to [*1150] push past the misconceptions made by and against fathers and reach child-focused outcomes.

A father's perception of marginalization is not illusory and is supported by a review across the nation of the child protection system.³⁷ The Minnesota Department of Human Services outlined strategies in a Performance

³³ See Andrew Birkeland & Sofia Estrellado, *The Disengagement of Noncustodial Fathers in Minnesota Child Protection Cases & Recommendations for Change*, Legal Scholarship for Equal Just. 1-2, <http://www.lsej.org/documents/483781Birkeland%20Estrellado%20Fathers%202.pdf> (last visited Mar. 25, 2014).

³⁴ See *Minn. Stat. § 260C.001*, subdiv. 2(a)-(b)(1).

³⁵ See Nat'l Child Welfare Res. Ctr. for Family-Centered Practice, *Father Involvement in Child Welfare: Estrangement and Reconciliation*, Best Prac./Next Prac., Summer 2002, at 1, 2, [hereinafter *Estrangement and Reconciliation*], available at <http://www.hunter.cuny.edu/socwork/nrcfcp/downloads/newsletter/BPNPSummer02.pdf>.

³⁶ See Vivek S. Sankaran, *Parents Patriae Run Amuck: The Child Welfare System's Disregard for the Constitutional Rights of Nonoffending Parents*, *82 Temp. L. Rev.* 55, 71 (2009) ("Even without a finding of unfitness against the nonoffending parent, the court can place the child in foster care, compel the nonoffending parent to comply with services, and order that that parent's rights be terminated based on the failure to comply with those services. These systems treat nonoffending parents as legal strangers to the child.").

³⁷ See Barry Salovitz, *Reintroducing Dad into the Family Equation, Making a Difference that Matters* (Child Welfare Inst., Duluth, Ga.), Feb. 2002, at 1-2, available at <http://centerforchildwelfare2.fmhi.usf.edu/kb/trcm/Reintroducing%20Dad%20Into%20the%20Family%20Equation.pdf>; *Estrangement and Reconciliation*, supra note 35, at 1; see also Jeffrey Rosenberg & W. Bradford Wilcox, U.S. Dep't of Health & Human Servs., *The Importance of Fathers in the Healthy Development of Children* 25, available at <https://www.childwelfare.gov/pubs/usermanuals/fatherhood/fatherhood.pdf> ("One study found that caseworkers did not pay

Improvement Plan in 2005 for social services agencies to examine personal thoughts and attitudes about working with fathers. ³⁸ It was recognized that poor outcomes for kids could be improved by a systematic change to actively engage fathers from the initial intake and case planning stage to disavow the notion that "fathers are excluded from all levels of child welfare practice; the system is mother focused." ³⁹

Administrative details are less challenging when the parents are not only told what they must do, but when their direct representative explains that handling their responsibilities will lead to enforcement of their rights. Unbiased information from the father's advocate about how failure to engage affects the permanent placement of the child is equally important. Legal advocacy in the court process from the beginning of the proceedings can greatly influence the father's success in the [*1151] process, validate his presence, and result in better outcomes for the child.

III. Creating a New Norm

Research shows that when fathers are involved in court processes there are improved outcomes for permanency and stability of children. ⁴⁰ Still, ambiguity exists among legal advocates about when a natural father's substantive due process rights attach in the initial CHIPS action to give him a say in the outcome. Presently, legal advocates in Hennepin County are challenging the concept that we don't do it that way in juvenile court.

A. Party Status for Fathers in Court

Under Minnesota law, the CHIPS action is commenced against the custodial parent as the protector of the health, safety, and welfare of the child. ⁴¹ The county attorney creates the narrative for the court action based upon social services contact with the family. Throughout the action, the court relies on the social worker's certified reports of activity for its perspective of the case. ⁴² The guardian ad litem neutralizes conflicting perspectives based upon independent review of the best interests of the child. ⁴³

The father is considered a participant, usually regardless of legal status, and can attend proceedings, but he is limited to the discretion of the court to provide input in the decisions made about the children during the court

attention to birth fathers to the degree that they did to birth mothers."); Sankaran, *supra* note 36, at 70 ("The overwhelming majority of states currently maintain child welfare systems that disregard the constitutional rights of nonoffending parents.").

³⁸ PIP TIPS: Involving Fathers, Improving Outcomes for Child. & Families (Minn. Dep't of Human Servs.), June 2005, at 4, available at http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs_id_051473; see also Rosenberg & Wilcox, *supra* note 37, at 25 ("To work successfully with fathers, caseworkers must know what their own biases and preconceptions are about fatherhood and fathers.").

³⁹ PIP TIPS: Involving Fathers, *supra* note 38, at 1 (quoting The Fatherhood Factor in Permanency Planning, Prac. Notes (Ctr. for Advanced Studies in Child Welfare, St. Paul, Minn.), Mar. 2004, at 1, available at <http://cascw.umn.edu/wp-content/uploads/2014/01/Practice-Notes-15.pdf>).

⁴⁰ Salovitz, *supra* note 37, at 1-2; see also Birkeland & Estrellado, *supra* note 33, at 3 ("Where fathers are involved, children are discharged from foster care more quickly."); Sankaran, *supra* note 36, at 80 ("Parental engagement will only enhance the quality of child protective proceedings."). See generally *Minn. Stat. § 260C.001*, subdiv. 2(b)(3) (2012) (stating that the purpose is to "preserve and strengthen the child's family ties"); Minn. R. Juv. Prot. P. 1.02(d) ("The purpose of these rules is to: ... whenever possible and in the best interests of the child, preserve and strengthen the child's family ties.").

⁴¹ *Minn. Stat. § 260C.151*, subdiv. 1; see *id.* § 260C.001, subdiv. 2(a).

⁴² See Minn. R. Juv. Prot. P. 38.01, subdiv. 1-2.

⁴³ *Id.* R. 26.

process, such as placement and future custody.⁴⁴ The father must be permitted to be heard at a hearing,⁴⁵ but appointment of legal counsel for the father is [*1152] discretionary as the court deems appropriate.⁴⁶ When requested, party status is granted as a matter of right to the parent as his role is important to resolution of the matter.⁴⁷ The timing of a noncustodial parent's request for party status is significant because any court actions, including findings and orders, made prior to party status are not affected by the noncustodial parent's status change.⁴⁸ Effective representation of a father during the initial CHIPS process is significant to navigate the roles and rules.

B. Challenges to Effective Representation

The Father's Project provides legal counsel to the father, a resource that was largely missing prior to the project. Even as the project evolves, however, there is still a lapse in time in appointing an attorney before the next hearing. To have an attorney appointed, the father must be informed that he is eligible for assistance, and that rarely happens until he makes his first court appearance.⁴⁹ The father fills out an application to determine income eligibility for an attorney. The father does not meet with an attorney on the same day that he makes a request for counsel. Depending on which hearing the father attends when he makes the request for counsel, the next hearing could be in ten to ninety days with assumed disengagement by the father.⁵⁰ After notice of eligibility, the father is often unsure of what to do until he is face to face with legal counsel because he felt marginalized from the outset of the process. Prior to the father meeting with an attorney to get an explanation of the process, he is requested to sign legal documents determining tasks that should be completed by the father, mother, foster parent and social services agency in the form [*1153] of either a case plan or out-of-home placement plan. In some instances, if the father asks to review the matter with legal counsel, the request is viewed by the agency as refusal to cooperate, and contact is stopped until the attorney appears in court.⁵¹ Time is crucial in a child protection matter because statute requires that a permanency petition be filed by eleven months after a child is placed out of home.⁵² Precious time is lost, particularly when a child is under the age of eight. If a child is under the age of eight, the statutory timeline requires that a permanency progress review hearing occur at 180 days to review the parent's progress on a case plan and visitation.⁵³ The father then has some catching up to do to demonstrate his commitment to his family.

⁴⁴ [Minn. Stat. § 260C.163](#), subdiv. 2 (specifying that the right to be heard does not automatically impose party status).

⁴⁵ *Id.*

⁴⁶ *Id.* § 260C.163, subdiv. 3(b).

⁴⁷ Minn. R. Juv. Prot. P. 21.01, subdiv. 1(e), (g).

⁴⁸ *Id.* R. 23.04.

⁴⁹ [Minn. Stat. § 260C.163](#), subdiv. 3 (providing that the parent has a right to effective assistance of counsel in connection with a proceeding in juvenile court).

⁵⁰ Minn. R. Juv. Prot. P. 34.02, subdiv. 1 (providing that when a child is placed out of home, the admit/deny hearing occurs ten days from the emergency protective care hearing, if not combined); *id.* R. 34.02, subdiv. 2 (providing that the admit/deny hearing occurs within twenty days if the child is not placed out of the home); *id.* R. 41.06, subdiv. 1 (providing that, after a CHIPS adjudication, a review hearing occurs at least every ninety days when a disposition awards custody to an agency).

⁵¹ See [Minn. Stat. § 260C.212](#), subdiv. 1(d) (providing that the parent has a "right to legal counsel in the preparation of the case plan ... at the time of placement of the child" out of the home).

⁵² Ahlstrom, *supra* note 5.

⁵³ *Id.*; Minn. R. Juv. Prot. P. 42.01, subdiv. 5(a); see also *id.* R. 42.02, subdiv. 2 (explaining that the permanency review hearing reviews the parent's progress on the case plan, and the court determines whether the parents are in compliance and if the child would benefit from continuing the relationship).

The legislature intended that a child taken out of the custodial home should be placed in the home of a noncustodial parent.⁵⁴ The unfortunate event of CHIPS out-of-home placement creates a conversation about the next of kin. Although the social services agency may have provided services to the mother for a period of time, the nonresident father is rarely actively included in those services. Fathers who do not have custody or failed in their attempts to navigate the family law legal system for parenting time prior to the CHIPS action are deemed absent and considered to have a lack of interest in personal contact with their child.⁵⁵ Conversely, a father's legal custody in some instances is a double-edged sword used against fathers that are nonresident as a showing that he implicitly complied with the issues that led to CHIPS due to his unawareness of the treatment of the child. The noncustodial parent's legal counsel can navigate these conversations with the parent and provide legal advocacy.

Assessments and case planning should not be opportunities to highlight a father's problems and deficiencies for exclusion, but instead should be used to engage and provide services, as [*1154] necessary, in responsible fathering.⁵⁶ Clients appear with a multitude of barriers from failed custody efforts in family court; parenting determinations limited to child support orders; hectic, nonflexible work schedules; and limited financial resources.⁵⁷ Creating a new norm necessitates that social services agencies move away from the focus that each parent must first be deemed unfit to offer services and utilize funding.⁵⁸ That limited view cuts across racial lines, equally affecting a father with a challenging criminal past and a father who is in the working-poor class with no discretionary time to attend unnecessary appointments.⁵⁹ Assessment of a father's viability as a caregiver is intended to be collaborative, relevant, and culturally sensitive in order to be comprehensive to improve performance on involving fathers to achieve safety, permanency, and well-being of the child.⁶⁰ An agency shall not use a background study or criminal record against a parent as the sole determination that a parent is not capable of day-to-day care of a child unless the agency believes that the placement would endanger the child's health, safety, or welfare.⁶¹ Diligent efforts to actively engage, not exclude, the father by offering resources intended to support the family is a benefit to obtaining positive outcomes for the child.

C. Long-Term Impact of Noncustodial Representation

Parents that have limited communication about the care of their children prior to the CHIPS action are brought together to hear how their conduct impacts the future of the child. This forum [*1155] should encourage a father to express his desires for the basics of a continuous and strengthened relationship with his child by visiting and having input in how the child is raised and cared for. Repeatedly, a father will relay that he does not want to take the child from the mother, regardless of conflict. He simply wants to be involved in his child's upbringing and only knows the language of family law custody terms to express that desire. When he has a legal advocate, the noncustodial parent gains insight and empowerment to make informed choices about engagement in the child protection process and

⁵⁴ [Minn. Stat. § 260C.001](#), subdiv. 2(b)(6)(i).

⁵⁵ See Andrew L. Cohen, Representing Nonresident Fathers in Dependency Cases, in ABA Ctr. on Children & Law, *supra* note 9, at 49, 52.

⁵⁶ Estrangement and Reconciliation, *supra* note 35, at 5; Rosenberg & Wilcox, *supra* note 37, at 30 ("The case plan that a ... caseworker develops with a family is their roadmap to successful intervention. The outcomes identify the destination, the goals provide the direction, and the tasks outline the specific steps necessary to reach the final destination.").

⁵⁷ Mark S. Kiselica, Understanding Male Help-Seeking Behaviors, in ABA Ctr. on Children & Law, *supra* note 9, at 15, 19.

⁵⁸ See Nat'l Child Welfare Res. Ctr. for Family-Centered Practice, Father Involvement in Kinship Foster Care, Best Prac./Next Prac., Summer 2002, available at <http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/newsletter/BNPNPSummer02.pdf>; Sankaran, *supra* note 9, at 10-13.

⁵⁹ See PIP TIPS: Involving Fathers, *supra* note 38, at 2.

⁶⁰ *Id.* at 4 (recommending that agency-conduct assessments factor in cultural and community norms, forge community partnerships, and become familiar with fatherhood projects).

⁶¹ [Minn. Stat. § 260C.219\(a\)\(2\)\(ii\)](#) (2012).

services.⁶² The father can become a viable alternative placement option, whether short term or long term, for his child.⁶³

Placement with a father benefits the family by expanding options pre-and post-permanency. Arguably, advocacy is the most vital when the child is placed with the father because the father needs support balancing the services for the child and learning about community resources for family stability. Extended placement without resources could present challenges to a working-poor father. When a child is placed with a father, there is inconsistent assignment of a child social worker to assist with resources or simple transportation needs for the child to various services, such as medical appointments or even visits with the mother. Unlike when resources are given to foster care parents, the father must jump in headfirst and figure out such matters as timing, payment, and transportation to multiple medical and service appointments while balancing visitation with the mother or risk accusations of interference with the mother's visitation, or he will be blamed for why services are not implemented.

A father who is persistent and advocates for resources to assist in temporary placement is an alternative permanent placement option for the child. In CHIPS, custody between the parents is unlikely to be addressed when the mother has made some form of [*1156] compliance with the case plan.⁶⁴ Family court rules are not applicable to juvenile court actions for petitioning for parenting time.⁶⁵ Visitation may be set during the course of the matter to provide the child with a connection with both parents while case plans are in progress and it is not yet known whether the custodial parent will maintain compliance.⁶⁶ After the CHIPS adjudication, a mother who experiences difficulty in sustaining progress in a case plan has a viable option to agree to a Transfer of Legal Custody (TLC) to the father.⁶⁷ The court can accept the agreement as a resolution to the CHIPS action and terminate jurisdiction.⁶⁸ At the end of jurisdiction, if the resolution does not include a form of TLC or TPR, the father remains in the same legal position with regard to his rights with the child.

A secondary option to reunification with the mother or placement with the father is placement with a relative.⁶⁹ Having a father involved lights the path for the paternal family to be a meaningful resource for safety planning, out-of-home placement, implementation of a service plan, permanency planning, and reevaluation of a service plan.⁷⁰ Also, noncustodial relatives are engaged early on in the process in a significant manner.⁷¹ If names are disclosed

⁶² Sankaran, *supra* note 9, at 35.

⁶³ PIP TIPS: Involving Fathers, *supra* note 38, at 2 ("Non-custodial fathers represent a logical permanency resource ..."); see ***Minn. Stat. § 260C.201***, subdiv. 1 (stating that a child may be placed in "the home of a parent who does not otherwise have legal custody; ... the home of a father who is not adjudicated; ... [or] the home of a noncustodial parent with conditions," which are different options than transferring legal custody to a child-placing agency); *id.* § 260C.219(a)(1).

⁶⁴ Birkeland & Estrellado, *supra* note 33, at 19 (explaining that the law remains to reunify the child with the custodial parent, so balance is "to ensure the nonoffending parent does not undermine the offending parent's ability to reunify with her child" (citing Sankaran, *supra* note 36, at 85)).

⁶⁵ See generally [Minn. Stat. §§518.17](#), .175 (stating that a father in a separate proceeding in family court after juvenile jurisdiction ends can seek custody by a show of involvement and commitment to the health, safety, and welfare of his child).

⁶⁶ Cohen, *supra* note 55, at 55-57.

⁶⁷ Minn. R. Juv. Prot. P. 42.07, subdiv. 5.

⁶⁸ *Id.* R. 42.07, subdiv. 2; see also Minn. State Court Adm'r's Office, Minnesota Judges Juvenile Protection Benchbook 17-11 (2011).

⁶⁹ [Minn. Stat. § 260C.219\(b\)\(5\)](#).

⁷⁰ What Can Child Welfare Workers Do to Involve Fathers?, Child. Services Prac. Notes (Apr. 2009), <http://www.practicenotes.org/v14n1/fathers.htm>.

⁷¹ PIP TIPS: Involving Fathers, *supra* note 38, at 2 (discussing how involving fathers potentially expands the pool of relative placement options).

by the custodial parent, extended family should receive notice from a kinship worker that alternative placement may be needed.⁷² But rarely do the families get more than an initial screening by letter or telephone until serious consideration is given [*1157] to placing the child out of home permanently through a TPR, which could be months or a year down the road. The juvenile court process spans the time period from one court appearance to over a year of court proceedings. Information is continually gathered and regularly updated in the child protection matter. It is critical that more than one parent's viewpoint is considered, and this allows the extended family to feel that their support and family members' strengths are important to the ongoing process.

IV. Conclusion

Creating a new norm for active engagement of fathers demands legal representation and consistent application of statutes and case law. Moreover, an intentional shift away from we don't do it that way in juvenile court provides a space for solutions that strengthen ties of the family and serve the child's best interests.

Being a responsible parent is undoubtedly a journey for some. The noncustodial parent foremost is responsible for active participation, persistent demand for consideration, and consistent follow through. Engagement of fathers starts with counsel that understands fathers' legal rights and views the child protection process from their perspective. As knowledge increases, a father has a choice to engage and positively influence his child's upbringing. The Father's Project opens the door to expand resolutions focused on the best outcome for the child.⁷³ Noncustodial parents involved in the project are also advocates for spreading the word among families in the community that the opportunity exists to engage parents and their extended families in the beginning stage of the court action. That communication can change the view from a mother-biased system to that of family collaboration to serve the juvenile protection system's purpose of preserving and strength-ening family ties while securing a safe and stable home for each child.

William Mitchell Law Review

Copyright (c) 2014 William Mitchell College of Law

William Mitchell Law Review

End of Document

⁷² [Minn. Stat. §§260C.212](#), subdiv. 2, .221(a), .219(b)(6); Minn. State Court Adm'r's Office, *supra* note 68, at 30-3.

⁷³ Hennepin Cnty. Admin., *supra* note 6, at 11.