

CHAPTER 14



Zero to Three Family Drug Treatment Court

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On May 3, 2005, the Zero to Three Family Drug Treatment Court (0–3 FDTC) opened in the Separate Juvenile Court of Douglas County (Omaha), Nebraska, with a focus on improving outcomes for substance-abusing parents and their children from birth to age 3. This chapter traces the origins of the 0–3 FDTC, the philosophy supporting the program, the framework, and how and why the FDTC operates as it does. Because goals of FDTC are to help parents become sober and fit caretakers for their children, some people think FDTC is all about the parents. Some FDTCs focus primarily on the parents (Edwards & Ray, 2005). However, Omaha’s 0–3 FDTC gives equal attention to both parents and babies, and recognizes the rights of the parent and the baby to due process, fair hearings, and timely outcomes leading to reunification or other permanency, such as adoption. While research has not yet examined the efficacy of 0–3 FDTC, plans are under way to develop an evaluation for the program. To date, the qualitative data from the program indicate much success for babies and parents going through Omaha’s 0–3 FDTC program.

THE DEVELOPMENT OF THE ZERO TO THREE FAMILY DRUG TREATMENT COURT

Prior to May 2005, the docket for cases involving abused and neglected children was extremely busy. The juvenile court in Douglas County, consisting

of five judges in the most populous county in Nebraska, hears one-third of all child welfare cases in the state. As the court began to convene meetings with governmental and private agencies about the possibility of an FDTC focusing on infants, toddlers, and their parents, many court stakeholders were concerned about whether the addition of another court improvement program would be possible, especially one of this magnitude. After much discussion leading to consensus about moving forward, a presentation was made in 2002 to Nebraska Supreme Court Chief Justice John Hendry on the merits of piloting a 0–3 FDTC, and the presentation was received positively. Since the Supreme Court administers to all lower courts, it was crucial to have his approval in order to request implementation of the pilot project because it would require a reallocation of limited court resources and voluntary collaboration of court systems stakeholders. Encouraged by administrative permission to proceed, and the excitement and willingness of court stakeholders to participate, plans were made to create a new type of problem-solving court.

It is important to elaborate on how the decision was made to change court practice and focus specifically on cases involving children under age 3. Research shows that infants fare poorly even when the court and child welfare agency try to provide for their safety through removal from neglectful or abusive parents and placement into foster care. In fact, 1 in 5 foster care placements is an infant; once infants are in care, they remain twice as long as older children (Wulczyn & Hislop, 2002). In 2008, there were an estimated 1,740 child fatalities due to child abuse or neglect and more than three-fourths (78.1%) of these children were younger than age 4 (U.S. Department of Health and Human Services Administration of Children and Families, 2008). Unfortunately, children in the age group from birth to 1 year old suffer the highest rate of victimization at 21.7 per 1,000 children (U.S. Department of Health and Human Services Administration of Children and Families, 2008). There is scientific evidence that the first 3 years of a child's life are *the* most formative period for cognitive and emotional development (Shonkoff & Phillips, 2000). During this time, the infant's brain "hardwires" for learning, language, self-esteem, motor skills, and social relationships. Babies develop best with a consistent, nurturing, caring, and loving parent or caregiver (Dicker & Gordon, 2004).

Prior to starting the 0–3 FDTC in Omaha, the most vulnerable children suffered foster care "drift," being moved by the child welfare agency from foster home to foster home up to 8–10 times in a single year (Wulczyn & Hislop, 2000). Also, each additional placement a child experiences reduces the odds of obtaining permanency within the year by 32% (National Clearinghouse on Child Abuse and Neglect Information, 2005). The Nebraska Department of Health and Human Services (DHHS) provided supervised

visitation between parent and child once or twice a week for 1 or 2 hours. No one knew what a “Part C” (early intervention) evaluation¹ was, and none were ordered by the court. Parents did not receive any rehabilitative services until after adjudication (90 days from the filing of the petition),² and not until disposition (60 days from the adjudication under favorable conditions).³ A “petition” is a pleading, with allegations of parental abuse or neglect; an “adjudication” is the trial of the allegations; and the “disposition” is the hearing in which evidence is offered as to services to correct the abuse or neglect and to meet the best interests and well-being of the child. The court process regularly required between 4 and 6 months before the young child and parent(s) received any intervention or treatment services. These families were being treated like “files” instead of persons. The court process and the reasonable efforts services of DHHS⁴ were failing both the baby and the parent.

As one judge in collaboration with legal professionals, DHHS, and service providers, we were determined to create an alternative to “business as usual” for families in situations where substance abuse played a major role in the allegations of maltreatment. The science of early childhood development showed the court that these children may already have suffered developmental damage or delays when they come into foster care (Leslie, Hurlburt, Landsverk, Barth, & Slyman, 2004). The existing court process and lack of knowledge of the science of early childhood development meant that these children’s developmental needs were not being properly addressed, and indeed, the court might be causing further trauma for the children (see *ohiocandokids.org*; *nctsn.org*). The rehabilitative needs of the parents were also not being met in a timely way. Nationally, parental substance abuse and mental health issues account for 70–80% of all children in foster care (Foster, 2001), and the parents of the babies in our court were no different. Our goal was to help the youngest children and to provide them with a better opportunity for well-being, safety, healthy development, and timely permanence, and to give their parents a better opportunity for timely rehabilitation services and possible reunification.

GETTING STARTED

In spring 2002, the court and agency stakeholders convened service providers and legal professionals to create an FDTC planning team that included the following:

- A DHHS Child Protective Services worker to serve as the case manager
- The Douglas County Juvenile County Attorney

- The Douglas County Public Defender
- A guardian *ad litem* (child's best interest attorney)
- Court-Appointed Special Advocate (CASA) for Douglas County
- Family Connections, Inc., a nonprofit corporation to facilitate the collaborative and comprehensive provision of child welfare and behavioral health services

Fortuitously, in December 2002, the Separate Juvenile Court of Douglas County was selected to become a National Council of Juvenile and Family Court Judges (NCJFCJ) Child Victims Act Model Court, and I became the Lead Judge.⁵ The Court had worked with the NCJFCJ since 1994, and had already implemented many recommended court systems reforms from its two landmark publications, *Resource Guidelines: Improving Court Practice in Abuse and Neglect Cases*, and *Adoption and Permanency Planning Guidelines: Improving Court Practice in Abuse and Neglect Cases*, which included the following:

- Avoiding unnecessary separation of children and families.
- Permanency planning for timely reunification or other permanency plans when reunification is not feasible.
- Meaningful and timely hearings in child abuse and neglect cases.
- Making timely decisions in child abuse and neglect cases.
- Oversight role of the juvenile and family court judge—judicial leadership on and off the bench.
- One family—one judge—for continuity of judicial decision making.
- Direct calendaring by the judge, credible court dates, time management, and notice to the parties on the record.
- A no-continuance policy to prevent delays in decision making.
- Court collaboration with systems stakeholders—judicially led collaborative meetings and educational trainings for court systems reform and improvement.

Through participation of one court in the Model Courts project, additional federally funded NCJFCJ technical assistance, training, crossover court site visits, and participation in the Annual NCJFCJ All Sites Conferences was available for the program. In fact, the 0–3 FDTC pilot project was identified as an Omaha model court goal at the 2004 NCJFCJ All-Sites Conference. A great deal of new information was available from other model court sites that had existing dependency drug treatment courts showing positive outcomes, and assimilated some of their protocols that fit our local community. In this way, the Douglas County Juvenile Court could benefit from and build on knowledge gained in other jurisdictions, which allowed the court to build on precious experience.

In addition, several model court judges were focusing special attention on infants and toddlers in foster care, albeit not with an emphasis through FDTC. We worked closely with Judge Cindy Lederman from Miami-Dade County Juvenile Court in collaboration with Joy Osofsky in developing the model in Douglas County Juvenile Court.

To gain additional knowledge from the promising preliminary results from Miami-Dade Juvenile Court, utilizing our model court training funds, the court invited Judge Cindy Lederman, Dr. Joy Osofsky, and Dr. Vicky Youcha to present in Omaha a daylong training session in August 2002, entitled "Infant and Toddler Well-Being in the Child Welfare System." In addition to learning about the Miami Juvenile Court model, the court was introduced to child-parent psychotherapy and relationship-based assessments in order to begin implementing these evaluation and treatment models. All court systems stakeholders were invited to attend this training at no cost, and more than 200 people participated. The collaborative team from Miami, with Dr. Youcha from Zero to Three, presented information on the science of early childhood development, the Florida Infant Mental Health Pilot Program, and the intervention and treatment model being implemented in Miami Juvenile Court,⁶ which provided relationship-based assessments and child-parent psychotherapy.

After this training, the court decided to combine this model of evaluation and treatment with an FDTC focusing on babies. This holistic approach could provide help for infants and their mothers. If fathers were involved with the child, then they, too, were encouraged to be involved and learn how to care for and nurture their babies.

FACILITATED PREHEARING CONFERENCES

Another vital element in the 0-3 FDTC process was instituting facilitated prehearing conferences in 2004. The facilitated prehearing conference, which modified the existing protective custody hearing,⁷ was another goal of the Omaha Model Court.

The protective custody hearing is the first hearing where parents, the legal professionals, and DHHS come to court for a hearing to discuss whether a child can safely be returned to the parents and upon what conditions, or whether the child must remain in temporary foster care. Typically, protective custody hearings in Omaha were held between 3 and 12 days after children were removed from their homes. For 15 minutes, the court heard from attorneys about what the outcome of the hearing should be in a highly contentious proceeding. Because they were seen as the cause of child maltreatment, parents were not viewed as potential partners in finding or building on family strengths to meet the best interest of their children. The

brief hearing did not come close to the *Resource Guidelines*' recommendation of 1 hour for a problem-solving atmosphere and meaningful hearing.

It was apparent that the protective custody hearing was not meeting the needs of parents, their children, or the court. Therefore, after partnering and training with the Pima County Model Court in Tucson, Arizona, the court assimilated their model of a facilitated prehearing conference, which occurs prior to the protective custody hearing and focuses on providing a meaningful opportunity to build on family strengths and talk about issues that meet the best interests of the child. Facilitated by a neutral mediator, conference participants include the parents, other family members or friends, legal professionals, child welfare workers, and other interested parties. Although the judge addresses the participants and sets an encouraging, problem-solving tone, the process is completely off the record, and the judge and court reporter are not present. By state statute, the parental participation and discussion cannot be used against the parent to prove the child maltreatment case. The only exception is mandatory child maltreatment reporting. Whenever a child is placed into foster care, DHHS has the legal duty to assess the family and maltreatment with regard to what rehabilitative services might correct those issues.

Through this problem-solving process, greater respect is shown to the family and all involved, and parents are more likely to deal voluntarily with issues. During the 1-hour facilitated prehearing conference, the participants establish early on the needs of the children and the rehabilitative needs of the parents. Within days after this hearing, parents can receive services and have safe family time (visitation) with their children. Parents are now active participants at the beginning of proceedings. Some even admit to the child maltreatment allegations at this first hearing in order to improve parental inadequacies and get their children home sooner. The prehearing conference is not only a problem-solving tool to help all children and their parents but also an excellent opportunity to introduce appropriate families to 0–3 FDTC.⁸

The court's plan to combine these programs as a way of better meeting the needs of infants, toddlers, and their parents continued to progress as funding was received for both skills-based training related to starting an FDTC and to hire an FDTC coordinator.⁹ After several years of patient planning, training, and collaboration, the court was prepared to start seeing babies and their parents in 0–3 FDTC in May 2005.

ESSENTIALS OF THE ZERO TO THREE FAMILY DRUG TREATMENT COURT

Mission Statement

Like most FDTCs, the Omaha 0–3 FDTC has a mission statement to help it stay focused and to support a consensus that fits the community:

Douglas County 0–3 Family Drug Treatment Court seeks to achieve healthy, safe, permanent homes for infants and toddlers in state custody due to parental substance abuse. It provides for the timely resolution of child maltreatment for the benefit of children, families, and society through intense supervision and special collaboration of the court, child welfare, community, and treatment providers.

The mission statement reminds all the participants that the 0–3 FDTC serves both baby and parent. A parent not only has to overcome substance abuse within a reasonable time frame according to the Adoption and Safe Families Act, but also she must be able to properly care for her baby. Providing care and nurturance for her baby may include resolving issues of housing, legal source of income, domestic violence, and all other issues necessary to parent her infant independently. Each baby deserves a nurturing, caring, loving, stable, and consistent parent. If the parents cannot fill that role, the prosecutor will file a termination of parental rights pleading. In that case, we refer the family for mediation of the permanency issue. Mediation has proved successful, with the majority of parents voluntarily relinquishing their parental rights, which frees the baby for adoption.

The Role of the Judge

The role of the judge is critical in any juvenile or family court. Juvenile and family court judges, compared to judges in other courts, have an especially challenging jurisdiction given the complexities of not only the law but also family life. The court works with experts in mental health, substance abuse, medicine, child abuse, sociology, education, domestic violence, housing, legal income, and other areas. The judges do not sit as disinterested magistrates. Rather, they work on and off the bench in the community to ensure that children and family needs are met. All of the stakeholders are held accountable pursuant to our state and federal laws. Child welfare recommendations are not “rubber-stamped” child welfare recommendations. Rather, the court follows through with necessary findings to determine whether a child can safely be returned to his or her parents, whether reasonable efforts have been offered to prevent removal of a child or to return the child to the parents, and ultimately whether a parent’s rights to a child should remain intact or be terminated. In my view as a judge, such work is more important than civil litigation of any other kind. The court is dedicated to improving the lives of children and their parents.

At 0–3 FDTC, as in all my other cases, as a judge, I strive to set a problem-solving tone by acting and speaking with respect, dignity, and civility to all involved, and I expect the same of them. Judges are ethically responsible

to ensure that this occurs. Parental improvement is encouraged by using affirmation with accountability. The smallest correct step that a parent has made is recognized. Even if a parent missteps (e.g., sees old friends and smokes marijuana), the parent is encouraged with compliments for calling the caseworker, therapist, and sponsor, and owning up to what occurred. The parent is supported for coming to court and not avoiding responsibility. A fundamental principle of the 0–3 FDTc is to focus on strengths, while dealing with weaknesses. The court believes that it is in a child’s best interest to have a permanent caring parent, and parents are reminded of that every time they are in court. While some FDTcs measure success by the number of parents who graduate (or “commence,” as the 0–3 FDTc terms it), the Douglas County FDTc court does not do so. The goal is reunification; however, the measure of success is related to whether the infant or toddler gained a permanent caring caregiver in a timely manner, and without multiple foster placements. The court works diligently to make the first placement the last. Timely adoption is a successful outcome when reunification is not possible.

Finally, it is the role of the judge to collaborate with organizations and stakeholders such as NCJFCJ, Zero to Three: National Center for Infants Toddlers and Families, Early Interventionists, the child welfare agency, service providers, all court systems stakeholders, and a host of others to promote ongoing improved practice and outcomes. Collaborative work is time consuming. However, for professionals with the desire to be of service to infants, toddlers, and their parents, that duty is recognized and willingly fulfilled.

Goals for Infants and Toddlers

Each infant or toddler must achieve a safe, secure, permanent home in a timely fashion according to the Adoption and Safe Families Act (ASFA),¹⁰ defined as no later than the 12th month after having entered foster care. This aspect of ASFA notes the paramount concern for a child’s well-being and safety, and for a permanent caregiver. Children are not meant to languish in foster care, which is why ASFA set deadlines for permanency. If a child is still in foster care at the 12-month Permanency Planning Hearing, a compelling reason must be documented by the child welfare agency in order to grant more parental rehabilitative time. If additional time is granted, a similar hearing must occur within 30 days after the 15th month in foster care. Evidence must be presented as to why more time is needed (i.e., either the parent has not had time to avail herself of services, the child has been placed with a relative, or a compelling reason exists not to terminate the parental rights).

When a baby must be placed out of the parental home, we seek a secure, nurturing, caring, and loving caregiver who is willing to adopt the baby. In many instances we place the baby with a relative because of information gained at the prehearing conference. We strive for the first placement to be the last one. We know it is in the baby's best interest to have as few placement disruptions as possible.

Whenever possible, we enable infants and toddlers to live safely with their parents, with the help of safe and supportive relatives or providers. Ideally, a mother lives with her baby, if it can be done safely. However, a parent who is an active substance user presents an obvious danger to her baby. If that safety concern can be met, through others who can ensure the baby's safety, we can encourage bonding and attachment. If a relative is interested, foster care training and licensing is offered. This option has been successful in most instances.

Another resource in Omaha is the "Family Works" program through Heartland Family Services, an original partner in starting 0-3 FDTC. Through a federal grant and private donations, this provider offers apartment-style living for pregnant mothers or mothers with a child 1 year old or younger. As long as this requirement is met, older siblings are welcome, too. All of the mother's treatment needs are met in this setting. This provider also offers relationship-based assessments and child-parent psychotherapy for mother and baby. With time, the mother learns to fulfill all of her parental duties in a supportive environment.

Compared to how the court operated before 0-3 FDTC, infant and toddler developmental needs are now identified and met through medical, hearing, vision, and dental, evaluations; Early Development Network and Part C evaluation and services to the child and parents; Early Head Start; Head Start; relationship-based child assessments; child-parent psychotherapy; and parent training. We encourage training of local clinicians in relationship-based evaluations and child-parent psychotherapy in order to provide the same type of therapeutic help to infants and parents in 0-3 FDTC.

As mentioned earlier, 0-3 FDTC is not just about the parent. For that reason, concurrent permanency planning is implemented (i.e., reunification and adoption) from day one, which is allowed under ASFA. While this approach sometimes "unnerves" parents' defense attorneys, it reminds the parent that the ASFA permanency clock is ticking, and that the infant has the right to a fit parent in a timely way. The court emphasizes to the parents that there is no "perfect" parent, and perfection is not required. The court also emphasizes that the parent must be able to fulfill parental duties within a reasonable amount of time. If not, a contingency plan is in place so that the child will not suffer from foster care drift (i.e., moving the child from home to home, without a clear plan for permanency).

Goals for Parents

Parents who agree to participate in 0–3 FDTC must actively participate in the program and be responsible for their life choices. Trainings have indicated that there is a difference between a parent’s *inability* to comply with court-ordered rehabilitative services and a parent’s *unwillingness* to do so. Trained clinicians working with the parent on substance abuse recovery need to know the difference. We also have learned that many, if not most, of these mothers are very young—late teens to early 20s—and were already in the court system due to their parent’s abuse or neglect of them. These young mothers come to the court with a history of trauma. The earlier traumatic experiences include growing up in foster care, or being the victim of child sexual abuse or domestic violence. Many of the young mothers suffer from untreated anxiety or depression. The court works with gender-specific mental health and substance providers who are sensitive and effective with this population. Treatment must be sensitive to the parent’s needs and cannot be the same for women and men. If the interveners or therapists are not trained to work with trauma and the services are not delivered sensitively and well, the result can lead to potential failure of services and a finding by the judge that the child welfare agency did not offer reasonable efforts.

To be successful, parents must achieve adequate parenting skills and demonstrate the ability to provide a safe, healthy family environment for their children. Especially for parents coming from abusive and limited environments, such skills development takes time. These parents must learn about components of adequate parenting skills, including putting the baby’s best interest and needs first; responding to developmental needs; providing for the young child’s medical, dental, vision, and educational needs; and learning how to cook, budget, and provide a safe and decent home.

In order to help the parent achieve a sober lifestyle and mental well-being, early substance abuse and mental health evaluations, participation in gender-specific treatment, sober supports, and work with a sponsor with at least 5 years of sobriety are provided by the program. The parent must complete treatment and aftercare, and maintain ongoing support and counseling as needed. Mothers who are compliant with the program are learning to live life again. For these parents, the journey is a process much more like a “marathon than a sprint.”

Additional Concerns for Parents

The 0–3 FDTC provides due process and fair hearings. Before the implementation of this program in the court, we studied several FDTCS around

the country to learn more about their process of conducting hearings and disputed matters. The situations were not handled as expected. At time, parents would disagree with what the FDTC team stated was noncompliance, or had what seemed to be a good reason to deviate from what they were supposed to do. For example, one mother was ordered to enter inpatient substance abuse treatment. But due to the length of time it took for the availability of an open bed, rather than enter inpatient treatment, the mother enrolled herself and was participating in intensive outpatient treatment. When this became apparent to the FDTC team, the sanction of jail was recommended. The mother told the judge that she enrolled in intensive outpatient treatment because no inpatient bed was available, had negative drug screens for drugs or alcohol, was maintaining a job, and was paying the mortgage on her home. Nevertheless, the judge stated the mother was not in compliance, and she was sent to jail for several days.

As a judge, I was troubled by the use of jail as a sanction. Much criminal drug court training, as well as some FDTC training, calls for immediate sanctions for noncompliance. This can include jail time, if a parent is noncompliant with program requirements and, therefore, in contempt of court. Some FDTCs view the jail time as a “retreat,” a “wake-up call,” or a way to show the parent that the court “means business.” While respecting this different view, the 0–3 FDTC is in fundamental disagreement with the propriety or appropriateness of such a sanction, especially since parental maltreatment of a child is a civil action. Research suggests that imprisonment should not be used as a sanction for a number of reasons, including the lack of evidence that jail sentences produce better results and the negative impact that jail sentences can have on the child’s life, leading to possible temporary placements and loss of visitation with their parents (Edwards, 2010). Treatment considerations should guide decisions concerning parental failure; since imprisonment is not treatment oriented, the court believes it is an inappropriate sanction (Edwards, 2010).

Recently, the California Supreme Court held that contempt of court and incarceration are not permissible sanctions in child protection cases (*In re Nolan W.*, 2009). It is possible that other state Supreme Courts may follow suit, if an appeal is heard. The California Supreme Court reasoned that the law in child welfare cases focuses on the child’s well-being, best interest, and permanency, and the ultimate sanction is termination of parental rights. The court noted that a parent does not have to participate in services if she or he does not want to.

In training provided by NCJFCJ, substance abuse and mental health issues have been described as diseases. If a substance-abusing parent suffers from anxiety or depression, has a relapse, or otherwise makes a mistake and is held in contempt and jailed, would it not follow logically that a

non-substance-abusing parent who has neglected or abused a child would be more culpable and also deserve such a sanction? Yet common practice is that they do not suffer the same consequences. Our court does not think this response is fair or helpful.

Affirmation motivates parents to improve. Drug court professionals generally agree that rewards and other positive incentives enhance the effectiveness of collaborative courts (Meyer, 2007). Some literature notes that awarding small tokens worth only a dollar for some parental progress is often successful in helping parents overcome methamphetamine abuse (Join Together, 2005). Omaha's FDTC has never used jail as a sanction and will not in the future. The 0–3 FDTC is collaborative, encouraging, and affirming with accountability. In cases where reunification is not likely, mediation related to the issue of permanency is offered, and the court has found that the mother usually chooses to relinquish parental rights voluntarily because she was treated with respect, dignity, and affirmation. The result is few terminations of parental rights hearings in 0–3 FDTC.

Eligibility Criteria

There are a few requirements to participate in 0–3 FDTC. Since the primary focus is children from birth to age 3, at least one child of the parent must be in that age range. We also accept siblings. Our court follows NCJFCJ's protocol of one family–one judge for continuity of judicial decision making and familiarity with the family. It does not make sense to separate older siblings to another docket or to have another judge hear that part of the case. In training provided by NCJFJ, we learned that other FDTCs have some families on the FDTC docket who also remain on the docket of origination, resulting in two judges reviewing the case. The FDTC judge reviews the case under that program's protocols, which are normally intensive, with frequent appearances in court. The judge in whose court the case started retains the case for 6-month review hearings.¹¹ Our court did not follow that practice because often it is inefficient and not helpful to families.

Participation in 0–3 FDTC is not mandatory; families are accepted into our program if they have entered into voluntary adjudication (an admission to the allegations in the petition without trial). This shows a willingness on the part of parents to accept responsibility for their substance abuse issues that resulted in the removal of their children and placement into foster care. Most parents' love for their child is unquestioned. That love is a strong motivating factor for a parent to want to get better, which is why focus is placed on parental strengths, even small ones, which are recognized publicly in court. Our court affirms that the parent is worthwhile.

CASE EXAMPLE 1: AN ALTERNATIVE WAY TO PARTICIPATE IN THE PROGRAM

There are some exceptions to voluntary participation in the program. On occasion, a parent's defense attorney has asked the 0–3 FDTC team to order the parent into the program. This occurs for a variety of reasons, not all of which are made known to the team or judge. For example, a mother delivered a baby, and both tested positive for methamphetamine. Child Protective Services gathered historical information about the mother from another state and discovered that the mother previously had had other children placed in foster care due to her substance abuse. The mother did not achieve reunification because she never gained sobriety or adequate parenting skills, and her parental rights had been terminated. Under ASFA, a prosecutor need only obtain a certified copy of the judgment of parental rights termination from any jurisdiction, register it, then file an immediate termination of parental rights action based solely on the prior termination. That is exactly what the prosecutor did in this case.

At the prehearing conference, as the judge, I did not shy away from the allegations that included termination of parental rights. There was not a foregone conclusion that the termination allegation would be granted because showing that there was a prior termination of parental rights is only one part of the prosecutor's burden. The prosecutor must also prove that it is in the best interest of the child to have her parent's rights severed. Such an action was not being heard at that time, but it might have in the future. I encouraged everyone to consider what services would help the mother deal with her methamphetamine problem and learn to properly care for her newborn.

Just as in other, similar cases, an array of rehabilitative services was identified and would be provided to the mother if she wanted to participate before the adjudication. The mother told me, against advice of counsel, that she just wanted to relinquish her parental rights. She had never been able to "beat meth" and at this point in her life did not want to try. Generally, I am patient and determined, so I encouraged her to consider 0–3 FDTC. Other mothers with similar drug and child protective histories had completed our program and were sober and successful parents. She told me she could not believe it, so I invited her to visit the next session of 0–3 FDTC. She came each Tuesday over the next 3 weeks, but in the end, she still wanted to relinquish her parental rights. Needless to say, she continued using methamphetamine. Finally, at the mother's fourth visit to 0–3 FDTC, her defense attorney stood up and asked me to order her client into 0–3 FDTC. The mother was shocked and upset. A situation like this had never occurred before. The defense attorney made a heartfelt plea for

me to order her client into the program because it was the mother's only real chance to learn how to parent her baby, live substance-free, and be reunified with her infant. I agreed and ordered the mother to participate in 0–3 FDTC.

In this case, the mother succeeded in treatment, commenced from 0–3 FDTC, and was reunified with her baby. Her progress was the result of being in an intensive, affirming therapeutic court process that helped her learn to value herself over time. She had been self-medicating for years in order to stave off her depression. Her drug lifestyle and irresponsibility to prior children cut her off from family ties. Through 0–3 FDTC, those relationships were healed. Seeing this woman's desire to get better, along with participation in our program, helped her mother, the baby's grandmother, forgive her daughter and offer support, concern, and love. She also became a group leader at "Moms Off Meth," a sober support program for women. I remind parents every time they are in court that they can get better and must never give up on themselves or their baby.

CASE EXAMPLE 2: PROTOCOLS MUST BE FLEXIBLE

Generally, parents who have violent felony charges or convictions with lengthy incarceration are not allowed into 0–3 FDTC. This protocol was added because of the unlikelihood that there would be successful bonding and attachment between the child and parent. Moreover, reunification is an unlikely permanency objective in such a case, and often a termination of parental rights allegation is filed in the Petition, with a request that no reasonable efforts rehabilitative services be offered to the parent. When such cases occur, the family is referred for mediation of the permanency issue and usually results in voluntary relinquishment of parental rights to a relative.

There was one exception. A father was convicted of felony domestic violence assault on the mother of their baby. The parents' use of methamphetamine and domestic violence resulted in placement of their infant and toddler into foster care in my court. In this case, we allowed them into 0–3 FDTC because they were willing to participate, and because the criminal court judge would suspend the sentence of incarceration if the father graduated from the program. Both parents successfully completed 0–3 FDTC despite complex and multiple rehabilitative issues. Reunification of their infant and toddler occurred in a timely fashion.

Parents who suffer such severe, prolonged mental illness that improvement is unlikely are not accepted. Unfortunately, these parents usually are not able to develop a bond or form an attachment with their babies, and reunification is unlikely.

KEY ELEMENTS

As noted earlier, the prehearing conference and protective custody hearing provide the critical opportunity on day one to invite parents into a collaborative, problem-solving specialty court such as 0–3 FDTC. However, the prehearing conference and protective custody hearing are helpful no matter what brings the family to court. The first hearing is the most important and sets the foundation for all following hearings.¹² If done well, the protective custody hearing results in an informed judicial decision concerning whether or not a child can be safely returned home pending adjudication. Parental participation is strongly encouraged from the very beginning. Generally, the adage “nothing about us without us” applies to parents. By including the parents, we treat them respectfully, talking with them, not at them. This hearing is helpful in identifying parental strengths, relative support, and timely reasonable efforts and services at the earliest stage of the case.

This hearing focuses on discussing and resolving the following key protective custody questions:

- Should the child be returned home or kept in foster care prior to adjudication?
- What services will allow the child to remain at home safely? Is there a safety plan?
- Will parents voluntarily participate in services?
- Has DHHS made reasonable efforts to avoid out-of-home placement or to reunify?
- Are responsible relatives available?
- Is placement proposed by DHHS the least disruptive and in the most family-like setting?
- Does the Indian Child Welfare Act (ICWA)¹³ apply? Who will send notice and when?
- Will implementation of the service plan be monitored? Are restraining orders needed?
- What infant, toddler, and parental examinations, evaluations, or other services are needed? When should they be done? What is the source of payment? What are the terms/conditions for parenting time and sibling time?
- Is a child support referral/hearing needed?
- Are there absent parties and a need for future hearings?
- Whether to set the next hearing in court.

The court believes that infants, toddlers, and their parents should receive a coordinated “emergency room-type” response. Families need a prompt and effective response from the court and system stakeholders to

address the maltreatment issues that brought them to the court. Therefore, the court and team strives to offer these services:

- Access to immediate substance abuse and mental health evaluations, dual-diagnosis treatment and therapy, bonding and attachment-building opportunities, domestic violence programs, income, housing, and family support.
- A focus on a holistic child–parent relationship, well-being, and permanency—making sure the first placement is the last.
- Daily or near-daily parenting time (visitation) with safety plan.
- Parents and baby reside together as soon as safely possible.
- Fewest foster placement changes.
- Parent–child relationship assessments, evidence-based parenting services, and evidence-based child–parent psychotherapy treatment.
- Intensive judicial monitoring through frequent court appearances.
- Collaborative, nonadversarial court stakeholders supported by ongoing cross-training.
- Service plan based on incremental goals, expectations, and requirements.
- Use of graduated incentives and corrective actions to effect behavior change.
- Enhanced case management to monitor progress/facilitate.
- Free age-appropriate books and encouragement for parents to read to their babies/toddlers.
- Diet and exercise, and smoking cessation.
- Education, job skills, time management.
- Planned activities for the parent and child to include social interaction and healthy self-care.
- Help with safety planning regarding domestic violence, housing, relationships, friends, and family.
- Random, frequent, and observed drug testing—more in the beginning and less with phase progress.

PHASE STRUCTURE: 12–18 MONTHS

The court borrowed from other model court FDTCS a progression structure that sets achievable goals and rewards the parent for accomplishing them. The court learned, similar to other maltreatment cases, that overloading parents with too many tasks could cause them to give up. This is the structure of our program:

- Phase 1: Choice (45 days)
- Phase 2: Challenge (60 days)
- Phase 3: Commitment (90 days)
- Phase 4: Commencement/Graduation (90 days)
- Phase 5: Change (90 days)

These phases are not based simply on parental sobriety. The whole picture of the parent in relationship to the baby's well-being is always considered. The following question is addressed: Is this parent not only establishing sobriety but also becoming a skilled and caring parent for her baby?

INCENTIVES AND CORRECTIVE ACTIONS

FDTC training taught the court that incentives and sanctions are key elements of any program. As noted earlier, I disagreed about using sanctions of incarceration for contempt of court. However, when the program began, several stakeholders thought that this sanction should be included as part of the program. Although I reluctantly agreed, this sanction was never used in my court, as it did not seem helpful or appropriate, and it has not been part of 0–3 FDTC protocol since the first year. There is no statutory language in the Nebraska Juvenile Code using the term “sanction” with regard to child maltreatment cases. It seemed appropriate to use a different term when parents were not following the program protocols. In order to help parents be responsible for becoming the type of parent a baby needs and deserves, the court uses a more positive term—“corrective action.” The following incentives and corrective actions are used in our 0–3 FDTC.

Incentives

- Praise in the courtroom by the judge and others—words of encouragement, applause.
- Forgiveness/accountability for mistakes: Encourage the next right step.
- “Treasure Chest”—parents can choose a child's book or developmental toy, diapers, a personal hygiene item, or toothbrush/toothpaste (depending on what has been donated).
- Gift certificates, sober support inspirational medallions, certificates for phase advancement.
- Fewer court appearances.
- Solo parenting time—no oversight by child welfare agency or others.
- Living safely with one's child.

Corrective actions

- Pay \$10 fee or community service hours for missed, diluted, or positive drug tests.
- Setback in phase structure or zero days in phase level—depends on issue and can be set for evidentiary hearing.
- Increased level of treatment or therapy sessions, if recommended by the clinician.
- Write essay regarding child’s life in foster care, child’s view of missed family time because parent did not come; what kind of parent the child deserves and how to become that parent.
- Other community service—parent serves meals at a shelter to bring awareness and gratitude for the opportunity to turn her life around and become the parent her child needs.
- Observe a termination of parental rights hearing or Adult Drug Court sentencing—in the hope that these experiences help a parent make choices to avoid these outcomes.
- More frequent court appearances/drug tests—stepped-up court oversight, as in the beginning phase in order to encourage the parent to stay on point.
- Denial of parenting time (visitation) is never used as a corrective action. However, if a parent is under the influence of a nonprescribed, mood-altering substance, parenting time is delayed until it is safe for the child to be with this parent.

CHILD–PARENT RELATIONSHIP QUESTIONS FOR THE JUDGE

A critical part of 0–3 FDTC is asking parents questions about their relationship with their infant or toddler. It is important for parents to recognize their feelings, which they may have intentionally or unintentionally ignored while under the grip of substance abuse. By focusing on the parents’ feelings toward the child, as the judge, I can draw attention to why we are in court: “This is about your baby waiting to see if you will become a fit parent.” I ask different questions depending on what is appropriate for each mother. A judge has to be flexible, use common sense, and know what to ask (and what not to ask) at different times. Parents are encouraged to tell me something specific about their relationship with their babies. Here are some examples:

- “Describe one highlight/challenge of being a mother/father this past week. How did that feel?”
- “What is your child’s favorite color? Food? Toy? Blanket?”

- “What frightens your child? What do you do to comfort/calm her? How does that feel?”
- “How does your child react when he sees you? How does that feel?”
- “Describe your child in one, two, or three words.”
- “What books do you read to your baby? How does she react? What words does she say?”
- “Do you sing to your baby?” (Once a mother sang a made-up lullaby that all the other mothers then wanted to learn and sing to their babies.)
- “Describe the kind of father/mother your toddler needs. Are you that man/woman? Do you want to be? Are you getting there? What gets in the way?”
- “How does it feel to hold your child?”
- “What is your baby’s bedtime routine?”

Parents light up when asked these sorts of questions about something as intimate and special as their baby. While parents are proud of staying sober, their progress as parents is what clearly is most important to them.

PROGRESS SO FAR

Our 15th Commencement was held March 23, 2010. As of April 2010, the Omaha 0–3 FDTC has had:

- 56 participants—48 mothers and 8 fathers.
- 25 parents who successfully reunified with their children.
- 35 children successfully reunified with their parents.
- Four mothers delivered drug-free babies while participating in FDTC. These four babies never entered foster care.
- Participants with independent housing at time of Commencement: 25.
- Participants gainfully employed or receiving a legal source of income at time of Commencement: 24.
- Number unsuccessfully discharged: 11, with five voluntary relinquishments and one termination of parental rights.
- 92 total children have received a timely permanency outcome, either reunification or adoption.
- Currently: 14 active cases with 14 mothers, 3 fathers, 36 children.

EXPANDING EFFORTS TO HELP INFANTS, TODDLERS, AND THEIR PARENTS STATEWIDE

While the Omaha 0–3 FDTC has made great strides, more is needed for babies and their parents in Nebraska. Infant and toddler training need to be offered to juvenile courts and system stakeholders who do not have a specialty problem-solving court like the FDTC court. Greater awareness is needed about better court practice and the science of early childhood development, and what is possible using a community's existing resources. Moreover, many rural judges cover a great number of cases over vast geographic areas and do not have time for additional responsibilities such as 0–3 FDTC. After receiving approval from Nebraska's current Chief Justice Michael Heavican, I partnered with our state's Through the Eyes of the Child Initiative, NCJFCJ's Permanency Planning for Children Department, Zero to Three, DHHS, the Early Development Network (Nebraska's Part C/ Early Intervention System) and clinicians to plan a series of statewide training sessions called "Helping Babies from the Bench."¹⁴

In May 2008, the state began providing daylong, intensive, interactive training, free of charge, through court improvement funds and partners offering material and personal resources. System stakeholders who work in juvenile courts, child welfare, and early intervention are invited to learn about the science of early childhood development, including infant/toddler attachment and social-emotional development; the parent-infant relationship; meaningful parenting time (visitation); parental skills development; meaningful reasonable efforts services; NCJFCJ resources, such as *Resource Guidelines: Improving Court Practice in Child and Abuse and Neglect Cases*, with special emphasis on the facilitated prehearing conference and protective custody hearing; and Early Development Network Part C evaluations and resources. This information is integrated into the systems by forming small groups of multidisciplinary participants to discuss, analyze, and apply it to pragmatic case scenarios, with guided assistance by the trainers.

Evaluation responses have been overwhelmingly positive and appreciative, with many requests for more training on the subject. "Helping Babies from the Bench" has been presented in 13 communities throughout the state so far. Further trainings are being planned in 2010.¹⁵

CONCLUSION

To establish, grow, and maintain a specialty court such as 0–3 FDTC is not easy. Obtaining and maintaining funding for these programs is challenging and can "ebb and flow." Omaha's 0–3 FDTC recently received federal and local funding to be a Zero to Three court team, part of a broader national

initiative, with Douglas County Court as the project sponsor. In all systems, child agency administrations change and new ones may not support a 0–3 FDTC. Because turnover is constant, training must be ongoing. Team volunteers are pressed for time and have other cases. Still, the science of early childhood development informs us that business as usual is unacceptable and can even be harmful to infants and toddlers. Judicial leaders can convene court system stakeholders, provide training, and improve court practice and services for these babies and their parents. What would practice look like if we treated all babies and their families like our own? Would we accept less than an urgent and excellent response for our own children?

The reader is invited to observe the 0–3 FDTC and facilitated prehearing conferences. Our court would love to host you and all others who are interested in attending.¹⁶ Finally, this is not about the judge, the legal professionals, the child welfare agency, the CASA, or the service providers. It is always and only about those we serve: the infants, toddlers, and their parents.

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NOTES

1. The Early Intervention Program for children under the age of 3 years, also known as Part C of the Individuals with Disabilities Education Act [IDEA; 20 U.S.C. Section 1431 (2000)] (Osofsky, Maze, Lederman, Grace, & Dicker, 2002).
2. Adjudication Hearing—In child welfare proceedings, the trial stage at which the court determines whether allegations of dependency, abuse, or neglect concerning a child are sustained by the evidence and, if so, are legally sufficient to support state intervention on behalf of the child. It provides the basis for state intervention into a family, as opposed to the disposition hearing, which concerns the nature of such intervention. In some states, adjudication hearings are referred to as “jurisdictional” or “fact-finding” hearings (National Council of Juvenile and Family Court Judges [NCJFCJ], 1995, p. 121).
3. Disposition Hearing—The stage of the juvenile court process in which, after finding that a child is within jurisdiction of the court, the court determines who shall have custody and control of a child; elicits judicial decision as to whether to continue out-of-home placement or to remove a child from the home (NCJFCJ, 1995, p. 121).
4. Reasonable Efforts—Public Law 96-272, the Adoption and Child Welfare Act of

1980 requires that reasonable efforts be made to prevent or eliminate the need for removal of a dependent, neglected, or abused child from the child's home and to reunify the family if the child is removed. The reasonable efforts requirement of the federal law is designed to ensure that families are provided with services to prevent their disruption and to respond to the problems of unnecessary disruption of families and foster care drift. To enforce this provision, the juvenile court must determine in each case where federal reimbursement is sought, whether the agency has made the required reasonable efforts [42 U.S.C. 671(a)(15), 672(a)(1)]. ASFA added a new requirement for reasonable efforts to find permanent homes for children who cannot safely be reunited with their parent or guardian (NCJFCJ, 2000, p. 86).

5. The Victims Act Model Courts are a group of more than 30 juvenile and family courts around the nation working with the National Council of Juvenile and Family Court Judges' Permanency Planning for Children Department (PPCD) and using the best practices bench book *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* as a guide to systems reform. The model courts identify impediments to the timeliness of court events and delivery of services for children and families in care, then design and implement court and agency-based changes to address these barriers, with technical assistance and training from the PPCD (NCJFCJ, 2006).
6. Nebraska's Safe Start program provides early childhood mental health services specifically designed to meet the needs of children age 5 and younger, and their families, for a safe, secure, and developmentally appropriate home and family environment.
7. Protective Custody Hearing or Preliminary Protective Hearing—The first court hearing in a juvenile abuse or neglect case (referred to in some jurisdictions as a "shelter care hearing," "detention hearing," "emergency removal hearing," or "temporary custody hearing"), occurs either immediately before or immediately after a child is removed from the home on an emergency basis. It may be preceded by an *ex parte* order directing placement of the child; in extreme emergency cases it may constitute the first judicial review of a child placed without prior court approval (NCJFCJ, 1995, p. 123).
8. For a full discussion of the facilitated prehearing conference, please see Johnson (2009).
9. *Douglas County Zero To Three Participant Handbook* and other materials are available from the author.
10. ASFA—Adoption and Safe Families Act of 1997, Public Law 105-89, which amended Titles IV-B and IV-E of the Social Security Act to clarify certain provisions of Public Law 96-272 and to speed the process of finding permanent homes for children (NCJFCJ, 2000, p. 83).
11. Review Hearing—Court proceedings that take place after disposition, after the permanency hearing, or after termination of parental rights in which the court comprehensively reviews the status of a case, examines progress made by the parties since the conclusion of the prior hearing, provides for correction and revision of the case plan, and makes sure that cases progress and children spend as short a time as possible in temporary placement (NCJFCJ, 2000, p. 86).

12. NCJFCJ's *Resource Guidelines* (1995) provides a detailed description and a bench card checklist as a ready reference for any child abuse and neglect hearing.
13. ICWA—Indian Child Welfare Act, passed in 1978, addresses the removal of Indian children from their home and their placement with non-Indian families (NCJFCJ, 2000, p. 85).
14. The title was borrowed from Zero to Three's 2007 DVD of the same name. This free resource is available at www.zerotothree.org.
15. A sample agenda is available by contacting the author.
16. Contact the author at douglas.johnson@douglascounty-ne.gov regarding visiting the 0–3 FDTC or obtaining any related materials about the court.

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