

PRACTICAL ISSUES IN ADDRESSING REASONABLE EFFORTS

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Nebraska Appleseed Center for Law in the Public Interest

Through the Eyes of the Child

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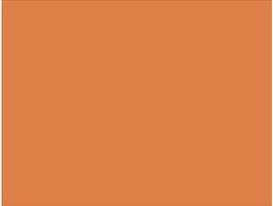
The Nebraska Appleseed Center for Law in the Public Interest

- Nebraska Appleseed was founded in 1996.
- A statewide non-profit, non-partisan public interest law firm that works for equal justice and full opportunity for all Nebraskans.
- Nebraska Appleseed uses litigation, public policy reform, and community education to positively impact low-income families, immigrants, children in foster care, and access to healthcare.
 - ▣ *Child Welfare System Accountability Program and the Foster Care Reform Legal Resource Center*
- Interdisciplinary staff, including lawyers, social worker, community organizers, technical and administrative support, law clerks & volunteers
- The Appleseed Network

Roadmap

- Overview of the RE requirement
- Making RE
- Enforcing RE
- Addressing RE issues out of court
- Discussion/questions





Overview of the RE requirement

State law on RE

- ▣ Neb. Rev. Stat. § 43-283.01
 - Aggravated circumstances and exceptions to RE
- ▣ RE is also referenced in § 43-532 (Family Policy Act) and § 43-292(6) (TPR)
 - RE does not need to be proven unless § 43-292(6) is alleged. See e.g., In re Interest of Chance J., 279 Neb. 81 (2009).
 - But may come in under best interests, particularly when § 43-292(7) (i.e., 15/22) is the only basis. See e.g., In re Interest of Aaron D., 269 Neb. 249 (2005).
- ▣ § 43-285 (court approval of case plan)

Federal law on RE



- 42 U.S.C. 671 (ASFA)
 - ▣ Neb. Rev. Stat. § 43-283.01 mirrors federal law
- New RE requirement in federal Fostering Connections Act - to provide sibling placement and contact unless contrary to safety or well-being. P.L. 110-351

Federal law on RE



- State plan requirement
- Suter v. Artist M., 503 U.S. 347 (1992) – no private right of action to enforce RE provisions (interpreting AACWA)
- If court makes no RE finding, state loses federal matching funds.

When is RE reviewed ?

In re Interest of
DeWayne G., 263
Neb. 43 (2002).

RE, if required, must
be reviewed by the
juvenile court at **four
stages** :

- ▣ (1) when **removing** from the home a juvenile adjudged to be under subsection (3) or (4) or § 43-247 pursuant to § 43-284;
- ▣ (2) when the court **continues** a juvenile's **out-of-home placement pending adjudication** pursuant to § 43-254;
- ▣ (3) when the court **reviews** a juvenile's status and permanency planning pursuant to § 43-1315; and
- ▣ (4) when **termination of parental rights** to a juvenile is sought by the State under § 43-292(6)."

Active efforts

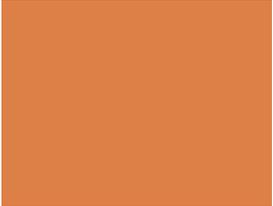
In ICWA cases:

“Any party seeking the foster care placement of or termination of parental rights to an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”

Neb. Rev. Stat. § 43-1505(4); 43 U.S.C. 1912(d).

In re Interest of Walter W., 274 Neb. 859 (2008)

- “...*the ‘active efforts’ standard requires more than ‘reasonable efforts’ in non-ICWA cases. And at least some efforts should be ‘culturally relevant.’*”



Making reasonable efforts

What is RE ?



- “...to preserve and reunify the families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile’s home and to make it possible for a juvenile to safely return to the juvenile’s home.”

NE appellate case law on early RE

□ Early on in a case

- Placement with a fit, non-custodial parent is a straightforward means of preserving families.

In re Interest of Stephanie H., 10 Neb. App. 908 (2002).

- On the other hand, placement out-of-state with a non-custodial parent may hinder RE with custodial parent.

In re Interest of Ethan M., 15 Neb. App. 148 (2006).

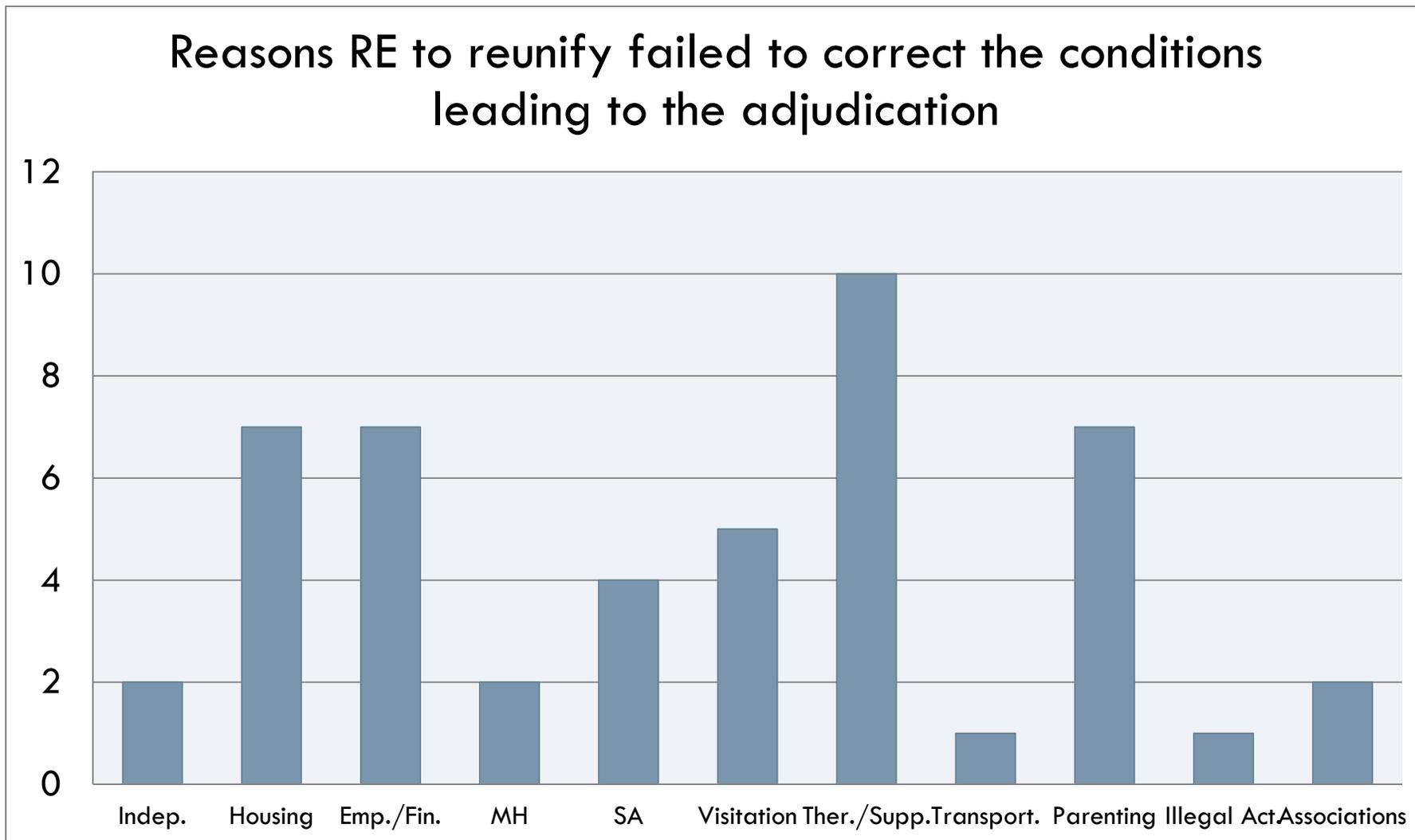
In re Interest of Theresa P.

2000 WL 1790011 (Neb. App. 2000) (unpublished)

Juvenile's health & safety are the paramount concern

- ❑ Parents challenged RE finding at detention hearing; child had a black eye she claimed she received from her father.
- ❑ COA upheld RE despite no efforts to eliminate need for removal.
 - *“Although it may, at first blush, seem absurd to suggest that no effort to eliminate the need for removal from a juvenile may, in fact, be considered a ‘reasonable effort,’ we note that § 43-283.01 clearly indicates that the juvenile’s health and safety are the paramount concern in assessing reasonable efforts. As such, the court’s determination that reasonable efforts were made, despite the lack of evidence of any effort to return Theresa to the home, is not unfounded because in the present case, there is evidence that returning Theresa to the home would be dangerous to her health and well-being.”*

Nebraska Appellate Case Law on RE at TPR



RE best practices



▣ To avoid removal:

- Fully investigate
- Provide appropriate services for a sufficient period of time
- Effectively implement a safety plan
- Identify and explore potential relative and non-relative placements
- Seek a protective order prior to removal

Adapted from: Judge R. Michael Key and the National Council of Juvenile and Family Court Judges, “The Golden Rule of Reasonable Efforts – Aspirational or Definitive?” Through the Eyes of the Child Summit, September 10, 2009, Grand Island, NE.

RE best practices

▣ To reunify:

- Develop a case plan around court's finding as to cause of separation
- Conduct proper assessments
- Match services with needs
- Do not expect too much out of parents too early in the case
- Provide meaningful visitation
- Develop resources
- Provide transportation

Adapted from: Judge R. Michael Key and the National Council of Juvenile and Family Court Judges, "The Golden Rule of Reasonable Efforts – Aspirational or Definitive?" Through the Eyes of the Child Summit, September 10, 2009, Grand Island, NE.

RE best practices

□ To reunify:

- Provide good information and follow up to services providers
- Obtain meaningful reports from service providers for hearings and reviews
- Timely file revised case plans, evaluations, and other documentation necessary to conduct hearings and reviews
- Expedite child support proceedings
- Involve parents and others in case planning
- Communicate contents of case plan

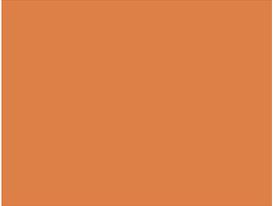
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RE best practices

□ To reunify:

- Communicate – period.
- Identify and work with the family's strengths
- Meet the needs of the child
- Be prepared for hearings and reviews
- Comply with the ICPC
- Comply with policy, standing orders, and protocols
- Implement effective practices
- Place siblings together or provide for meaningful sibling contact*

Adapted from: Judge R. Michael Key and the National Council of Juvenile and Family Court Judges, "The Golden Rule of Reasonable Efforts – Aspirational or Definitive?" Through the Eyes of the Child Summit, September 10, 2009, Grand Island, NE.



Enforcing reasonable efforts

in court

Enforcing reasonable efforts in individual cases



- Ask the court to make a specific order
- Object to RE findings
 - ▣ At detention hearing and subsequent hearings
- Present alternative case plan under § 43-285
- Reasonable efforts motion
- Contempt motion
- Request stay of 15/22
- Others?

No RE findings



- How does Title IV-E funding work?
- NE's penetration rate
- Effect of a no RE finding in individual cases

RE motions



- **Varies by jurisdiction*
- Seeking to have the juvenile court make a “no RE finding”
- Motion for Reasonable Efforts Hearing or similar motion
- What kind of facts, procedure, evidence?
- Remember DeWayne G.

Contempt motions



- **May vary by jurisdiction*
- If state or other party is not providing court-ordered services
- Motion to Show Cause
- Neb. Rev. Stat. § 25-2121 et seq.
- Must show the alleged disobedience was “willful”
- May motivate the offending party to rectify the problem because the court has the power to impose a fine or even imprisonment to enforce its order

What can be done in individual cases ?

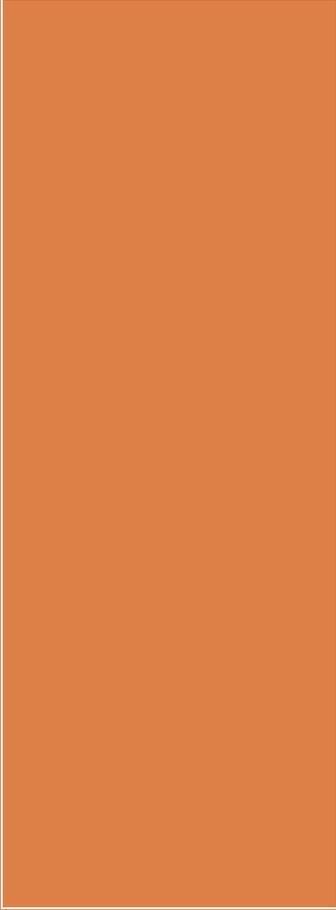
- If you are a GAL...
- If you are a parent's attorney...
- If you are a county attorney...
- If you are a CASA or FCRB...
- If you are a service provider...
- If you are a CFS Specialist or Service Coordinator...
- If you are a judge...
- Others, including foster parents, tribes, and other advocates

How is this affected by the CW reform ?



- HHS is still legally responsible
- Lead agency is financially responsible under the contracts for MH/SA services that are denied but court ordered*
- Role of Service Coordinator and CFS Specialist
- Improvements/challenges?

Reasonable ?



- Payment of services versus arrangement for services
- No services available in area
- Other issues ?

Addressing reasonable efforts issues

out of court

RE out of court



- In appropriate cases, work with HHS and lead agency to get services into place early in the case
- Work with team to present unified plan if possible
 - ▣ Pre-hearing conferences, team meetings, etc.
- Identify family and community supports
- “Old fashioned social work”

Discussion/questions

- Are RE motions routinely filed in your jurisdiction? If so, how are they handled?
- What services barriers exist to RE in your jurisdiction/experience?
- What RE successes have you seen?

Questions ?





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