



CHILD WELFARE CASE LAW

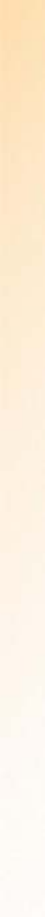
WHAT CHILD WELFARE CASES YOU SHOULD
KNOW ABOUT IN YOUR PRACTICE AREA

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Immigration Law



- **Cases Covered:**

- *In re BMGZ*
 - *In re LFOC, Minor*
 - *In re B & J, Minors*
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Immigration Law Statute

- **Special Immigrant Juvenile (SIJ)** status was established by the Immigration and Nationality Act of 1990 as a means for resident immigrant children to achieve permanent residency in the United States.
- **8 U.S.C. 1101(a)(27)(J) and 8 C.F.R. 204.11(c) provide five requirements for SIJ status:**
 1. Juvenile immigrant has been declared dependent on a juvenile court located in U.S.
 2. Juvenile immigrant's reunification with one or both parents is not viable due to abuse, neglect, or abandonment
 3. It would not be in the juvenile immigrant's best interest to return to the country of origin
 4. Less than 21 years of age
 5. Unmarried

In re BMGZ, __ Mich App __; __ NW2d __ (2021) - Docket No. 355922

- Facts - BMGZ was born in Honduras, mother and father not married, father not on birth certificate. BMGZ (age 8) and mother came to US and mom remarried – sought stepparent adoption and special findings so BMGZ could apply for SIJ status – trial court ruled BMGZ did not satisfy requirements 1-3 and could not apply for SIJ status.
- COA Rulings:
 - Findings for requirements 2-3 are premature because of simultaneous petition to identify birth father as legal father and terminate his parental rights.
 - Finding for requirement 1 is not satisfied because mother and step-parent are married, BMGZ would not be a ward of the state and thus dependent on a juvenile court.

***In re LFOC, Minor*, 319 Mich App 476; 901 NW2d 906 (2017)
- Docket No. 334870**

- Facts - Motion filed for special finding on issue of LFOC's SIJ status – trial court denied the request stating it lacked authority to make findings based on alienage.
- Issue - does probate court have jurisdiction to make findings on juvenile's SIJ status?
- COA Rulings:
- 8 U.S.C. 1101(a)(27)(J) and 8 C.F.R. 204.11 provide a two-step process for SIJ:
 - 1. State court makes factual findings relative to juvenile's eligibility.
 - 2. Juvenile takes findings to USCIS to make ultimate decision.
- Trial court has authority to make specific factual findings on SIJ status.

***In re B & J, Minors*, 249 Mich App 12; 756 NW2d 234 (2008)
- Docket No. 279461**

- Facts – F and M (parents of B and J) and their adult daughter (mother of E and A) all born in Guatemala, but J, E, and A were born in US. In 2006, DHHS sought termination due to allegations of sexual abuse by F court took jurisdiction and ordered DHHS to provide services with goal of reunification. DHHS reported F, M, and adult daughter to ICE and had them deported, re-sought termination under MCL 712A.19b(3)(g) – trial court subsequently terminated rights.
- COA Rulings:
 - “when a state deliberately acts with the purpose of assuring the creation of a ground for termination of parental rights and subsequently seeks to terminate on that ground, the state violates the due process rights of the parent.”
 - DHHS could not seek termination under 19b(3)(g) since it created that ground by reported respondents to ICE.

Criminal Law

- Cases Covered:

- *People v Tennyson*
- *In re Seay*
- *People v Spagnola*
- *In re S.J. Sandborn*
- *In re Blakeman*

***People v Tennyson*, 487 Mich 730; 790 NW2d 354 (2010)
- Docket No. 137755**

- **Facts** - Defendant convicted of, among other charges, contributing to the neglect of a minor under MCL 750.145. COA affirmed, stating the statute was aimed at preventing conduct which would tend to cause delinquency and neglect. Michigan Supreme Court granted leave to determine if evidence was legally sufficient to sustain conviction.
- **COA Rulings:**
 - Defendant's conviction could not be sustained – mere presence of child in the home is not evidence that child was inclined to become delinquent, child had no awareness of drugs/firearms in the home.
 - We use this case to challenge adjudication under MCL 712A.2 -- connection between parent's misconduct and the child. Criminality by parent is not enough.
 - Slippery slope argument – would then terminate majority of parental rights.

In re Seay, __ Mich App __; __ NW2d __ (2021) - Docket No. 351650

- **Facts - Alleged sexual assault of TS (then 8) by respondent (then 15/16). Petition filed in family division when respondent was 24 along with petition for family division to waive jurisdiction so circuit court could try respondent as adult. Family division subsequently dismissed the case without holding a waiver hearing.**
- **COA Rulings:**
 - Before waiving jurisdiction, family division must determine if proper cause is established, then hold a hearing to determine if waiver is in the best interest of juvenile and the public.
 - Trial court should have held a hearing before dismissing the case – remanded to conduct waiver hearing.

***People v Spagnola*, unpublished COA decision, decided Mar. 8, 2018
- Docket No. 330382**

- **Facts** - Defendant home alone with twin daughters, OS went limp, suffered a seizure and had subdural hematomas. Prosecution theorized abusive head trauma (AHT), sought expert testimony, and made emotionally-charged personal attacks to the jury.
- **COA Holding:**
 - Statements made by prosecutor denied defendant of a fair trial – conviction vacated and remanded for a new trial.
 - Problem is that TPR appeals always faster than Criminal appeals, such that by the time COA reversed criminal conviction, TPR appeal was done and no mechanism to reinstate parental rights.

***In re S.J. Sandborn, Minor*, __ Mich App __; __ NW2d __ (2021)
- Docket Nos. 354915 & 354916**

- **Facts - Parent's parental rights terminated – initial petition sought removal of children; court ordered DHHS to provide reasonable efforts. Trial court terminated at initial disposition without making reasonable efforts under MCL 712A.19a(2). Reasonable efforts not required when there are aggravated circumstances.**
- **COA Ruling:**
 - The inquiry for determining whether reasonable efforts shall be made begins with finding whether an exception to MCL 712A.19a(2) applies, such as whether aggravated circumstances exist or not.
 - “To the extent our Court had previously stated that the DHHS ‘is not required to provide reunification services when termination of parental rights is the agency’s goal,’” quoting *In re HRC* 286 Mich App 444, 463 (2009), that statement was dicta because aggravated circumstances were present in that case.”

In re Blakeman, 326 Mich App 318 (2018)

- **Facts** – Parents married with 4 children, 2 of whom were special needs. Mother babysat unrelated child who had seizure when she left child at home with her husband. Father accused of injuring unrelated child and removed from his home. After services, DHHS recommended that father return home, but prosecutor and trial judge insisted that father first had to admit to injuring unrelated child. Father refused to admit to committing a crime.
- **COA Holding:**
 - The privilege against self-incrimination allows a defendant to refuse to answer official questions in any other proceeding, no matter how formal or informal, if the answer may incriminate him in future criminal proceedings. Even though Father waived his rights at adjudication trial by testifying, there was a sufficient showing of compulsion at the dispositional review hearing.
 - The trial court gave the respondent a “Hobbesian choice” to either: (1) retract his claim of innocence, admit to child abuse at therapy as a condition of completing reunification services and expose himself to criminal prosecution for child abuse, or (2) maintain his innocence, which would likely result in the termination of his parental rights.
 - Trial court clearly violated father’s 5th amendment rights against self-incrimination when it conditioned unsupervised visitation and eventual reunification on his admission to child abuse.

LGBTQ Rights



- Case Covered:
 - *In re Churchill/Belinski, Minors*
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***In re Churchill/Belinski, Minors*, unpublished COA decision, decided
Mar. 15, 2018 - Docket No. 337790**

- Facts - Trial court adjudicated mother and took jurisdiction of three minor children under the allegation, among others, that mother coerced one which into a gender role the child initially expressed interest in, but ultimately did not want.
- COA Ruling:
 - Forcing gender role qualifies as emotional abuse under 722.622(g) and could cause deep and lasting harm to the child – affirmed lower court decision.
- Michigan Supreme Court vacated COA decision and dismissed the petition as to all three children.
- As to older children, no independent basis to assert jurisdiction. As to younger child, after SCT granted MOAA, parties agreed to dismiss Circuit court case.

Prison and Corrections

- Cases Covered:

- *In re Mason, Minors*
- *In re Rood*
- *In re Sanders*

***In re Mason, Minors*, 486 Mich 142; 782 NW2d 747 (2010)
- Docket No. 139795**

- **Facts** - Respondent was in jail when DHS removed children from mother's care, both parties pleaded no contest and were offered services in January 2007. Respondent was not included in subsequent hearings until December 2008 hearing where respondent provided proof that he was following the service plan, but mother was not. Parental rights to both parents were terminated, COA affirmed.
- **Michigan Supreme Court Rulings:**
 - Trial court was precluded from terminating rights because MCR 2.004(f) requires the opportunity for incarcerated parties to participate.
 - Incarceration alone does not constitute ground for termination, nor does a criminal history.
 - Failure to evaluate whether respondent could care for children in the future meant termination was premature - reversed and remanded.

***In re Rood*, 483 Mich 73; 763 NW2d 587 (2009)
- Docket No. 136849**

- **Facts** - Minor child was removed from mother's care while respondent was incarcerated. Upon release, respondent contacted CPS and gave phone number and address to participate in proceedings. Notice was sent to wrong address, respondent was unaware DHS was attempting to contact him, but his rights were subsequently terminated, COA reversed.
- **Michigan Supreme Court Rulings:**
 - Under MCL 712A.2(b), parents are entitled to notice of proceedings if a child is removed.
 - The failure to provide notice affected respondent's rights because it prevented the court from considering whether respondent could be capable of caring for the child.
 - Reasonable efforts were required to provide notice, which DHS did not do - termination was premature.

***In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014)
- Docket No. 146680**

- Due process requires a specific adjudication of a parent's unfitness before the state can infringe that parent's constitutionally protected parent-child relationship - one-parent doctrine is unconstitutional.
- Incarceration does not change the outcome because incarcerated parents can exercise the constitutional right to direct the care of their children while incarcerated.
 - So long as children are provided adequate care, state interference is not warranted.

Senior Lawyers

- Cases Covered:

- *In re I.M. Long, Minor*
- *In re Dailey, Minor*

***In re I.M. Long, Minor*, 326 Mich App 455; 927 NW2d 724 (2018)
- Docket No. 344326**

- **Facts - Maternal grandmother (petitioner) initiated proceedings to become the legal guardian because mother left the child with her and did not return. Petitioner filed to terminate rights of mother and then-unknown father, but father established paternity under affidavit of parentage. Nevertheless, the court terminated parental rights.**
- **COA Rulings:**
 - MCL 712A.2(b) outlines the requirements for a court to assume jurisdiction and MCR 3.903(A)(7) does not define “father” as a “putative father.”.
 - Putative father does not qualify as a father for purposes of exercising jurisdiction.
 - Termination of father’s parental rights is reversed.

***In re Dailey, Minor*, unpublished COA opinion, decided Oct. 15, 2019
- Docket No. 348064**

- **Facts - Maternal grandmother (petitioner) appointed legal guardian and ordered biological father to pay child support, but respondent was incarcerated and six months after support order was established, order was amended and reduced payments to \$0. Trial court found petitioner established jurisdiction because respondent failed to comply with the support order.**
- **COA Rulings:**
 - MCL 712A.2(b)(6)(A) requires evidence that parent had a support order established but failed to comply for over two years.
 - Respondent only failed to comply for six months because once the support order was amended to \$0, respondent no longer failed to comply.
 - Reversed jurisdiction and remanded.



THANK YOU!!

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