**Parental Defense Alliance**

**2022 Cases and Issues to Push**

**ADJUDICATION AND PLACEMENT**

**Cases:**

***In re AB*, 2021 UT App 91 (cert granted) (Emily\*)**

Mother had Daughter stay with Aunt and Uncle over the summers, and one year, when Mother was struggling with parenting Daughter, Mother had Daughter stay with Aunt and Uncle for an entire year. The juvenile court adjudicated Mother as neglecting Daughter because of emotional maltreatment, Daughter had stayed with relatives for over one year without support form Mother, and Mother did not pay for Daughter’s care. The Utah Court of Appeals reversed, holding:

* The court did not base its neglect ruling on any statutory grounds, and that was error.

***In re KS*, 2022 UT App 53 (Sara)**

* interesting potential arguments about expedited ICPCs

In this case, a non-custodial parent who lived in Louisiana asked to take custody of his children when they were removed from the custodial mother by DCFS due to issues with her drug abuse. The court concluded that the Division was required to investigate whether the non-custodial father was an appropriate placement, and invoked the Interstate Compact on Placement of Children ("ICPC") to require the Louisiana authorities to conduct an appropriate investigation of Father. Father argued that he should not have been subjected to such an investigation and that it was not appropriate to apply the ICPC process to natural parents. He failed to participate in the process and ended up having his parental rights terminated on the grounds of abandonment. The Court of Appeals was quite concerned by the arguments that Father raised about the application of ICPC and other issues, but concluded that Father had not raised them properly at the trial level and therefore had not preserved them for appeal.

**Issues to push (all):**

* **Family placement**
* **Adjudication orders are final and appealable**
* **Interlocutory appeals for non-final orders (disposition, shelter, pretrial)**
* **preservation of issues at all stages of the child welfare process**

**TERMINATION**

**Grounds cases:**

***In re CZ*, 2021 UT App 28 (Emily\*)**

Child was adjudicated dependent as to Father after Father experienced domestic abuse at the hands of Mother in the presence of Child. After Father did not complete services, the juvenile court terminated his parental rights. The Utah Court of Appeals affirmed, holding:

* The juvenile court’s finding that Father had not remedied the circumstances (exposure to domestic violence) that led to Child’s out-of-home placement was not against the clear weight of the evidence.

***In re AH,* 2021 UT App 57 (Emily)**

Children were removed from Mother and Father’s care, and Father was adjudicated as neglecting Children because of drug use and an incident of domestic violence. Father did not complete his services, and the juvenile court terminated parental rights for failure of parental adjustment. The Utah Court of Appeals affirmed, holding:

* Although some of trial counsel’s decisions were questionable, Father was not prejudiced by trial counsel’s failures because the juvenile court issued a detailed written decision that carefully applied the law and did not include confusion introduced by trial counsel.
* DCFS provided reasonable reunification services, and Father’s approach to services was lackadaisical.

**Best interests cases:**

***In re JAL*, 2022 UT 12 (Alexa)**

The juvenile court terminated Father and Mother’s parental rights after determining that Children were abused and neglected by the parents’ domestic violence and drug use. Children were placed for adoption with Uncle, but after the adoptive placement failed, Father and Mother moved for relief under rule 60(b). The juvenile court denied those motions. The Utah Supreme Court reversed, holding:

* The juvenile court erred when it determined that it could not return Children to Father “today,” when the statute explains that courts are to consider whether it is in the children’s best interests to return the children to the parents “after a reasonable length of time.” Utah Code § 78A-6-509.
* The juvenile court erred when it categorically dismissed permanent guardianship as not as stable or as permanent as adoption; the court should have considered whether permanent guardianship can equally protect and benefit the children.

***In re JP*, 2021 UT App 134 (Sara)**

Children were removed from Mother after they experienced domestic violence. The juvenile court eventually terminated Mother’s parental rights. The Utah Court of Appeals affirmed, holding:

* The juvenile court did consider whether another alternative to termination existed; it analyzed extensively whether a permanent custody or guardianship would work, and it rejected that option.

***In re ZCW*, 2021 UT App 98 (Alexa\*)**

A juvenile court refused to terminate Father’s parental rights. The court of appeals reversed, reasoning that the district court did not properly account for Father’s domestic violence. On remand, the juvenile court refused to allow Mother to amend her termination petition to include more recent acts. The district court concluded that termination was not in Children’s best interests. The Utah Court of Appeals reversed, holding:

* The best-interest inquiry is to be done in a present-sense fashion and must evaluate all relevant past and present circumstances bearing on the child’s welfare.
* When an appellate court asks the juvenile court to re-do its best-interest analysis, the analysis should be conduct with evidence leading up to the post-remand hearing.

**Standard of proof cases:**

***In re ER*, 2021 UT 36; *In re GD*, 2021 UT 19 (Sara/Alexa\*)**

* Appellate courts reverse a best-interests determination if it is against the clear weight of the evidence (the juvenile court failed to consider all the facts or reached a decision against the clear weight of the evidence)

**Issues to push (all):**

* **Hearsay**
* **Kinship placements**
* **Least restrictive alternatives**
* **Drug usage**
* **Reasonable efforts**
* **Swift permanency**

**ICWA (Emily)**

***In re ARF*, 2021 UT App 31**

Children were removed from Mother after she was arrested and placed with a foster family. After Mother proved and Children were Indian Children and subject to the requirements of ICWA, a tribal caseworker became involved in the case. He agreed that Children should stay with a non-tribal foster family because there were no tribal families that were available for placement. The juvenile court ultimately terminated Mother’s parental rights. The Utah Court of Appeals affirmed, holding:

* There was good cause to depart from ICWA’s placement preferences because Children were doing well in their foster family placement, Mother’s kinship placements were not approved, and the tribal caseworker did not provide any placement options with the tribe.

***Haaland v. Bracken* (and three other cases)*:*** The US Supreme Court has recently granted certon this issue: Does ICWA unconstitutionally discriminate on the basis of race in requiring state custody proceedings to give preference to placing an “Indian child” with “(1) a member of the child’s extended family; (2) other members of the Indian child’s tribe; or (3) other Indian families” rather than with non-Indian adoptive parents?

As the issue was further described in the SCOTUS Blog of February 28, 2022: "The justices granted review in a quartet of cases challenging the constitutionality of a federal law intended to protect against the separation of Native American families. Supporters of the law contend that a ruling that invalidates the law could have significant negative consequences for both Native American children and tribal rights. In *Haaland v. Brackeen* (consolidated for one hour of oral argument with *Cherokee Nation v. Brackeen*, *Texas v. Haaland*, and *Brackeen v. Haaland*), the justices agreed to review a ruling by the U.S. Court of Appeals for the 5th Circuit that invalidated portions of the Indian Child Welfare Act, a federal law enacted in 1978 that (among other things) establishes minimum standards for the removal of Native American children from their families and establishes a preference that Native children who are removed from their families be placed with extended family members or in Native foster homes. The court of appeals ruled that the provisions violate (again, among other things) the 10th Amendment because they “commandeer” – that is, impose duties on – the states. The federal government asked the Supreme Court to weigh in, which it agreed to do on Friday. The case will be argued in the fall, with a decision likely to follow sometime in 2023."

**APPELLATE REVIEW AND TIMING**

***In re EMF*, 2022 UT App 43 (Sara)**

Mother and Stepfather filed petition to terminate Father’s parental rights, and district court held hearing and denied petition on the record and in a minute entry in December 2018. The district court signed a written order in June 2020. Mother appealed. The Utah Court of Appeals held:

* Utah R. Civ. P. 58 applies to when judgments are final; here, the judgment was final 150 days after the minute order was entered. Mother’s notice of appeal, filed in June 2020, was untimely.

**ADOPTION**

***In re CC*, 2021 UT 20 (Sara)**

Child was born during the purported marriage of Father and Mother. Mother came to Utah, gave birth to Child and almost immediately relinquished her parental rights to the adoptive parents. Father's motion to intervene was granted, but he was later dismissed on partial summary judgment because his marriage to Mother was invalid. Father challenged this finding, citing a Utah statute that makes him the presumptive father as a result of an "attempted marriage," even if the marriage was invalid. Adoptive parents defended the district court's decision and also argued that the partial summary judgment was a final order that was not appealed, depriving the appellate court of jurisdiction. The Supreme Court disagreed with both arguments, finding that the partial summary judgment was not a final appealable order, and that the attempted marriage, even though void, was sufficient to give Father the right to object to the adoption.

***Scott v. Benson*, 2021 UT App 110 (cert. granted)** (Alexa)

Scott dated Mother while she was pregnant with Child, who was not Scott’s biological child. Scott and Mother lived together before and after Child’s birth, and Scott took a paternal role in Child’s life for the first several years. After Scott and Mother ended their relationship, Mother and Scott decided to have Scott file a voluntary declaration of paternity for Child, asserting (untruthfully) that Scott was Child’s biological father. Several years later, Scott filed a paternity action seeking parent time with Child. Scott acknowledged that he was not Child’s biological father but asked the court to prevent Mother from contesting Scott’s status as Child’s legal father. Although the district court invalidated the voluntary declaration of paternity as fraudulent, it concluded that Mother was estopped from denying Scott’s parentage. The **Utah Court of Appeals affirmed**, holding:

* A voluntary declaration of paternity that is successfully challenged for fraud under Utah Code § 78B-15-307 is not *void ab initio*, because the legislature did not specifically declare that declarations that are fraudulent are void.
* Declarant fathers whose voluntary declarations of paternity are fraudulent may still ask the district court to deny a motion to seek genetic testing under Utah Code § 78B-15-608 and to order the declarant father be the father of the child.