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THE LAW CENTER, S.C.

450 S. YELLOWSTONE DR.
MADISON, WI 53719
TEL 608-821-8200

602 PLEASANT OAK DR.
OREGON, WI 53575
TEL 608-835-6441

FAX 608-821-8201 · TOLL FREE 888-860-5437 · lawcenterwisconsin.com

Definitions of Relevant Legal Terms

by Lynn J. Bodi

Adoption

In simple terms, adoption is a legal procedure that vests parental rights to and responsibilities for a child in a person or couple other than the child's birth parent(s). In reality, adoption is a complex process with many steps. In Wisconsin, before there can be an adoption, the parental rights of the child's birth parents must be terminated, either by their consent or involuntarily, if grounds, as set forth in the statutes, exist. *See*, Termination of Parental Rights. Once the birth parents' parental rights are terminated, guardianship of the child is given to a licensed Wisconsin agency, unless the birth parent has placed the child for adoption with a relative, in which case, the adoption may proceed immediately. If an agency is given guardianship, the agency supervises approximately six months of post placement, after which the court finalizes the adoption.

Agency adoption – When a birth parent works with an agency and selects adoptive parents through that agency. Infrequently, the birth parent asks the agency to find the adoptive parents without his or her input.

Private adoption – When birth parents and adoptive parents find each other independent of any agency. Under Wisconsin law, they must still work with an agency in order to proceed with the termination of parental rights and adoption.

BadgerCare Plus

The name of Wisconsin's Medicaid program. *See*, Medicaid.

CHIPS

An acronym for *CH*ildren *In* need of *Pr*otection or *S*ervices. CHIPS is an umbrella term that refers to any of a number of types of cases that may be brought before a court under the traditional doctrine of *parens patriae*—the power of a court to intervene in a situation for the protection of a child. There are grounds for CHIPS set forth in the Children’s Code, such as abuse, neglect or related behavior.

Case Law

One of the four sources of law in the legal system of the United States. Case law is the law developed by judges through an accumulation of the decisions rendered on cases that involve issues of general application. It consists, generally, of the published decisions of the higher courts, which establish precedents that judges in lower courts must follow in issuing their decisions. This principle serves to make the decisions of the court system more consistent and predictable. Major portions of our statutory laws were taken directly from the set of principles developed over centuries in case law, *e.g.*, much of the criminal code.

Concurrent Planning

The primary goal of an out-of-home placement is almost always reunification with the parents. However, realistically, reunification may not always be possible. Therefore, there may be more than one permanency plan developed so that the best interests of the child are protected no matter what happens. For example, efforts may be ongoing to plan and prepare for reunification, but the child may also be placed with foster parents who are interested in adopting the child if adoption becomes the plan for the child. There are then two concurrent plans, reunification and adoption.

Courts, Children/Family

Wisconsin has four levels in its court system: the Supreme Court, the Court of Appeals, circuit courts and municipal courts.

Municipal Courts: As the name implies, Wisconsin’s cities and towns can create these courts and elect judges. These courts hear cases involving municipal ordinance violations, traffic matters and, often, juvenile matters including truancy, underage drinking and curfew violations. Not every community has a municipal court. Where municipal courts do not exist, these cases are heard by the county’s circuit court.

Circuit Courts: Each county in the state has a circuit court. These are the state's trial courts, that is, these courts can hold trials with a jury for fact-finding, where evidence is presented, witness testimony taken and the judge decides disputes. The circuit courts hear cases on all subjects, including criminal, juvenile, family, probate, small claims and civil claims. Each of the subjects that the circuit courts have jurisdiction over has a specialized body of law associated with it and usually extensive case law. For the sake of efficiency, the circuit courts with multiple branches may designate certain branches to hear all cases on a certain subject, *e.g.*, the criminal branch or the family branch. Colloquially, these designated circuit court branches may be known as "family court" or "children's court," but there is no fundamental difference between these courts and the other branches. In fact, the circuit courts typically rotate the designations on a periodic basis such that the judge in each branch will hear all types of cases over the course of his or her term in office.

Court of Appeals: The next level above the circuit courts is the Court of Appeals. Any party to a case in the circuit court generally has the right to appeal to the Court of Appeals if he or she feels that the circuit court committed a significant legal error in its decision. The Court of Appeals does not hear testimony or take any additional evidence. The Court of Appeals examines the record of the circuit court trial and accepts legal briefs from each of the parties, and renders a decision on that basis. If it finds a significant legal error, it will remand the case back to the circuit court with instructions to render a new decision, which may or may not result in a different outcome.

Supreme Court: At the top of the court system sits the Supreme Court, the state court of last resort. Parties to a case who have had their appeal denied by the Court of Appeals may petition the Supreme Court for review of the case. The Supreme Court chooses which cases to review, and it chooses only those cases in which it can decide issues of statewide interest that will apply generally to many cases, will harmonize conflicting case law, or clarify statutory law. The Supreme Court accepts a very small percentage of cases for review. It examines the case record and usually hears additional legal arguments from the parties at oral argument before the seven justices render a decision by majority vote.

Custody (or Legal Custody)

The right to make major decisions about and on behalf of a child and the duty care for the child. The decisions may include the child's place of residence, medical care, education and religion. Custody traditionally

referred to the rights and duties of the child's birth parents, but the law has developed in Wisconsin so that a court may give other family members or even unrelated persons custody of a child. Note that legal custody of a child does not necessarily mean that the child lives with you. *See*, Physical Placement. *Compare*, Guardianship.

Daycare assistance

See, <http://dcf.wisconsin.gov/childcare/wishares/default.htm>

The state government runs a program called Wisconsin Shares that provides child care subsidies for low-income families who meet certain eligibility requirements.

Foster Care

When a child is found to be in need of protection or services and removed from his or her parental home, there are several options for placement. The child may be placed with a relative; in fact, by law the court must consider a relative placement when placing a child outside the parental home. If a fit and willing family member is not available, another option is foster care. Foster parents are persons who are willing to care for children who are in need of an out-of-home placement and who meet licensing requirements which include background checks and other requirements.

Guardian ad litem

A guardian ad litem is a person appointed by the court to represent the best interest of a minor child in court. In a disputed family law case and in every termination of parental rights case, the court needs an impartial person to participate in court proceedings on behalf of the child. Unlike in some states, in Wisconsin, a guardian ad litem must be a lawyer. One can think of this person as a child's attorney, but there is a key difference: The guardian ad litem represents the child's *best interest*, not necessarily what the child wants. Children may be too young to express an opinion, they may not be able to state clearly what they want because they feel caught in the middle of a fight between family members, or they may express a desire for an outcome which would be harmful to them. In Wisconsin, a guardian ad litem must have completed certain legal education requirements.

Guardianship

Guardianship is the legal duty and authority to protect the personal and property interests of another person who cannot adequately look after their own interests due to age, disability or incapacity. It is different from

custody because it originates from a different legal doctrine and, in Wisconsin, from different chapters of the statutes. Whereas custody arises from the traditional relationship between parent and child, guardianship is a bundle of duties and responsibilities assigned by a court. In Wisconsin, a court may appoint two different kinds of guardians, a *guardian of the person* who looks after the ward's physical well-being or a *guardian of the estate* who looks after the ward's financial interests. The court has the flexibility to appoint only one kind of guardian, appoint one person as both types of guardian, or appoint multiple co-guardians. The court may also appoint one or more *standby guardians* who assume the role of guardian should the original appointee resign or be unable to perform the duties of guardian. Further, the court can pick and choose from the bundle of possible authority to grant the guardian, so it can grant full or partial authority, for example, to choose schools, to authorize experimental medical procedures that may benefit the ward, consent to the release of confidential records or make decisions about the ward's travel.

Under Wisconsin law, one may petition a court for *temporary guardianship* which lasts for a period of 60 days, and which the court may extend for an additional 60 days.

Home study

Before placing a child with a family for adoption or approving an adoption with relatives, an adoption agency conducts a home study to determine whether that family is a suitable adoptive resource and to educate and prepare the family for adoption. The process may take a few months and involves home visits and interviews by a social worker from the agency, investigation of the family's finances, statements from references and background checks.

Kinship care

See, <http://dcf.wisconsin.gov/children/Kinship/>

A program administered by the Wisconsin Department of Children & Families to provide a monthly payment to relatives of a child to help with the expenses of providing care to the child, who lives with them.

Medicaid

Medicaid is a government program that provides health care services to eligible low-income persons in the United States. Eligible persons may include children, parents of eligible children, pregnant women, people with disabilities and elderly people who require nursing home care. Other

eligibility requirements include U.S. citizenship or permanent residency (in most cases), low assets and lack of other health insurance options. It is funded by both the federal government and the state governments, and administered by state governments. Wisconsin's Medicaid program is called BadgerCare Plus.

Parental rights

See, Termination of Parental Rights.

Permanency Plan

Wis. Stat. § 48.38(1)(b): "Permanency plan" means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

Wisconsin law requires that child protection agencies create a permanency plan to try to ensure that children who have been removed from their homes and placed in foster homes, shelters and detention facilities can achieve a stable life and stable relationships, by returning to their families if possible, or in another permanent home, if not. The plan must be reviewed at least every six months by the court or an administrative panel, and by the court at least once a year.

Physical Placement

This is a term used in cases in family court. When persons who do not live together share custody of a child, physical placement refers to the time during which the child lives with each person. During the times that each person has physical placement of a child, they may make routine daily decisions, such as about meals, bedtimes or discipline. Placement may be shared, meaning that the parents or persons acting as parents each have the child about the same amount of time. If the child is with one person for the majority of the time, that person is said to have "primary physical placement" of the child, and the other parent or person acting as a parent has "periods of physical placement."

Pro bono

Pro bono comes from the Latin phrase *pro bono publico*— "for the public good." In the legal profession it refers to legal work performed at no charge.

Pro se

On one's own behalf; without representation by an attorney.

Reunification

Reunification means the return of the child to his or her birth family, including the steps taken to achieve this goal. Often used in the context of a permanency plan.

SSI

Supplemental Security Income (SSI) is a U.S. federal government program that provides stipends to low-income persons living in the United States who are over age 65, disabled or blind. Although the Social Security Administration administers the SSI program, it is distinct from Social Security benefits. The U.S. Treasury pays SSI stipends from the government's general tax revenue (not the payroll tax) and eligibility for the program *does not* depend on a person's past income or contribution to the Social Security fund.

Sentence/revocation/probation

When a person is found guilty of a criminal violation, the penalty may range from fines to incarceration. The person may be sentenced to time in jail or prison or to probation. Sometimes, a sentence in jail (if less than one year) or prison (if for a longer amount of time) is imposed, but stayed, and the person is put on probation, which allows them to stay in the community with supervision. The person must comply with the terms of their probation, frequently requiring them to abstain from drugs and alcohol, to participate in treatment, to not commit further criminal acts, or to stay away from certain persons, etc. If they violate the terms of their probation, they are subject to revocation, which means that they may be required to serve out their sentences in jail or prison.

Shared/Joint custody

See, Custody.

When two (or more) people share the right to make major decisions about and on behalf of a child and the duty care for the child.

Special needs children

Special needs children are children whose emotional or physical disorders, age, race, membership in a sibling group, a history of abuse, or other factors make them difficult to place and adopt.

Supervised visitation

See, Visitation.

One of the most restrictive conditions on visitation is supervised visitation, which can be ordered in both CHIPS and other family law cases. This is when the court determines that the person visiting with the child is not a fit and proper person to care for the child even for the brief time of the visit. This may include persons with uncontrolled drug addictions, certain mental health problems, history of abusive behavior or lack of good judgment. In such cases, the person may spend time with the child only with a supervisor present, such as a guardian ad litem, a social worker, a family friend or the person's parents. The person who supervises the visits is often chosen by agreement of the parties, but is at the court's discretion if they cannot agree.

Termination of Parental Rights

Wis. Stat. § 48.40(2) says:

- "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

In common-sense terms, a court's order to terminate parental rights is the opposite of adoption; it severs the legal parental relationship. By tradition and law, a child may have only two legal parents, so the parents' rights must be terminated by a court before the child may be adopted by another person or couple (except in a stepparent adoption case).

A parent may consent to the termination of parental rights.

Parental rights may be terminated involuntarily if one of the grounds, *e.g.*, abandonment, failure to assume parental responsibility, continuing need of protection or services, etc., is proven.

There are two steps to a termination of parental rights in Wisconsin. First, the grounds must be proven. In Wisconsin, a parent may ask for a jury trial at which the person bringing the petition must prove that the alleged grounds exist. Once there are grounds, the court must hear further evidence to allow it to conclude whether termination of parental rights is in the child's best interest.

Visitation statutes and laws

There are several statutes which allow the court to order visitation for persons other than the child's parents. Wis. Stat. § 767.43 allows

grandparents, greatgrandparents, stepparents, or persons who have maintained a relationship similar to a parent-child relationship with the child to petition for visitation. The person seeking visitation must show that the child's family is not intact and that there is an underlying action affecting the family such as divorce or paternity, and the court must conclude that the visitation is in the best interest of the child. Wis. Stat § 54.56 allows a minor's grandparents and stepparents to seek visitation when one or more of the child's parents have died. Wis. Stat. § 48.925 allows a relative who has maintained a relationship similar to a parent-child relationship with a child who has been adopted by a stepparent or relative to seek visitation with that child, if the relative has maintained that relationship within two years of filing the petition. Finally, there is a common law (meaning court-made) right to seek visitation under *Holtzman v. Knott*, 193 Wis. 2d 649, 533 N.W.2d 419 (Wis. 1995) if the person had a parent-like relationship with the child established under the following four-part test:

- (1) that the biological or adoptive parent consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child; (2) that the petitioner and the child lived together in the same household; (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation; and (4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature. Once this test is satisfied, the person must also show that there has been a triggering event which has interfered with his or her relationship with the child.

Visitation

Court-ordered time spent with a child away from the care of the child's parent(s). Courts order visitation typically for people who have a significant relationship with the child, such as grandparents and relatives. The periods of visitation may last from hours to weeks, as specified in the court order, and may include restrictions on, for example, the places one may take the child, transportation, other people who may see the child or activities one may engage the child in.

WIC program

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) program provides “supplemental nutritious foods, nutrition and breastfeeding information, and referral to other health and nutrition services” for pregnant or breastfeeding new mothers and children up to age 5 who are residents of Wisconsin and meet the income guidelines.

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