

CLC PRACTICE POINT

No. 28

March 15, 2013

Understanding Protective Supervision

*By Amy Ryan, University of Minnesota Law School (J.D. candidate 2013)
and Anna Beadle, CLC Staff Attorney*

In most of Children's Law Center of Minnesota's cases, the disposition of the Child in Need of Protection or Services (CHIPS) proceeding is transfer of legal custody to the social services agency (hereinafter "the agency"), followed by an out-of-home placement, which could be a family foster home, group home, or residential treatment center. However, a fraction of CLC cases involve clients who live with their parents or guardians while the agency oversees and provides services. This is called protective supervision, another disposition available to the juvenile court when a child is adjudicated a Child in Need of Protection or Services (CHIPS) due to abuse or neglect.¹

Because the disposition of a child protection matter impacts both the daily life and the future of a child client, it is important for volunteer attorneys to understand protective supervision and how it differs from other common dispositions. It is also important to understand the possibilities for modifying dispositions. By doing so, volunteer attorneys will be better prepared to advocate for their clients' wishes and needs during CHIPS proceedings. This practice point will provide a short overview of case disposition; a description of protective supervision; a short overview of transfer of legal custody to the agency with out-of-home placement and trial home visits; and a description of the process for modifying the case disposition.

Disposition²

If the allegations in a CHIPS petition are admitted or proven, the court adjudicates the child at issue "in need of protection or services" and the case moves to disposition.³ Prior to the disposition the court may consider reports⁴ and may order a pre-disposition report.⁵ This report may include "an investigation of the personal and family history and environment of the child," as well as "medical, psychological, psychiatric, or chemical dependency evaluations of the child and any parent who is a party," and "information regarding the factors set forth in Rule 41.05."⁶ Note that this information often comes from the case plan, rather than from a

¹ Minn. Stat. § 260C.201, subd. 1(a)(1) (2012). Additional dispositions are available when a child is adjudicated CHIPS for runaway or truancy.

² For more information about the procedural steps that lead up to the disposition in a CHIPS case, please refer to Minnesota Statute § 260C (2012) and the Minnesota Rules of Juvenile Protection Procedure.

³ Minn. Stat. § 260C.201 subd. 1 (2012). See also Minn. R. Juv. Prot. P. 40.01; Minn. R. Juv. Prot. P. 41.02.

⁴ Minn. Stat. § 260C.193 subd. 2 (2012).

⁵ Minn. R. Juv. Prot. P. 41.03 subd. 1.

⁶ Minn. R. Juv. Prot. P. 41.03 subd. 1; Minn. R. Juv. Prot. 41.05. The court reviews the agency's use of the factors set out in Rule 41.05 for choosing an out-of-home placement for the child at issue. The factors, which are also found at Minn. Stat. § 260C.212 subd. 2(b)(1)-(10), are "(1) the child's current functioning and behaviors; (2) the medical, educational, and developmental needs of

separately prepared pre-disposition report.⁷ When the court orders the disposition, it must make written findings, including why the disposition is in the best interests of the child.⁸ Ultimately, regardless of which disposition is chosen, the court makes its decision based on “the health, safety, and best interests of the child.”⁹ The child’s “spiritual, emotional, mental, and physical welfare” should all be considered when deciding whether to take a child out of his or her home.¹⁰

Practice Tips

-If the guardian *ad litem* (GAL) assigned to the case does not submit a written report before the disposition, reach out to the GAL (after getting permission from the GAL’s attorney) to communicate about the client’s wishes (after getting permission from the client) as needed.

-Request a copy of the case plan from the county attorney.

-If the client is in an out-of-home placement prior to the disposition, monitor the client’s wishes for contact with relatives.

Protective Supervision as a Disposition

When protective supervision is the disposition, the court orders the agency to supervise the child “in the home of a parent or legal custodian under conditions directed to correction of the child’s needs for protection or services.”¹¹ The court may also allow a non-custodial parent¹² or a non-adjudicated father¹³ to care for the child under the agency’s protective supervision. An order for protective supervision does not last more than one year; however, that order may be renewed or the disposition may be modified.¹⁴ When protective supervision is in effect for a custodial parent, a review hearing occurs at least every six months; when the protective supervision is with a non-custodial parent a hearing occurs at least every ninety days.¹⁵ Time spent

the child; (3) the child’s history and past experience; (4) the child’s religious and cultural needs; (5) the child’s connection with a community, school, and faith community; (6) the child’s interests and talents; (7) the child’s relationship to current caretakers, parents, siblings, and relatives; and (8) reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.”

⁷ Minnesota Practice Series TM, *Juvenile Law and Practice*, Rule 41. Disposition. Scott, Robert & Sonsteng, John, 13 Minn. Prac., *Juvenile Law and Practice R 41*, Author’s comments concerning Rule 41.03 (2012). (“Frequently a case plan developed pursuant to Minnesota Statutes section 260C.212, subdivision 1 (2011) is submitted to the court by a local social services agency in lieu of a response to an order for a pre-disposition report.”)

⁸ Minn. Stat. § 260C.201 subd. 2(a)(1) (2012).

⁹ Minn. Stat. § 260C.001 subd 2(a) (2012).

¹⁰ Minn. Stat. § 260C.001 subd. 2(b)(1) (2012).

¹¹ Minn. Stat. § 260C.201 subd. 1(a)(1) (2012).

¹² Minn. Stat. § 260C.201 subd. 1(a)(1)(i), (iii) (2012). The court may even dictate that both the custodial parent and non-custodial parent must comply with the case plan concerning the child. Minn. Stat. § 260C.201 subd. 1(a)(1)(iii) (2012).

¹³ Minn. Stat. § 260C.201 subd. 1(a)(1)(ii) (2012). If protective supervision is granted to a non-adjudicated father then he must comply with paternity proceedings concerning the child. *Id.*

¹⁴ Minn. Stat. § 260C.201 subd. 7 (2012).

¹⁵ Minn. R. Juv. Prot. P. 41.06 subd. 2 (c). At review hearings, the court reviews the following: “(1) whether the agency has submitted a case plan for the parents or legal custodian and child as required under Rule 37; (2) after the agency has submitted a plan to the court as required under Rule 37, whether the plan continues to be relevant to the safety and best interests of the child; (3) whether the agency is making appropriate efforts to implement the plan; (4) whether the agency, child’s attorney and the guardian ad litem have reasonable access to the child to determine the child’s safety, health, and well-being; (5) whether the parents or legal custodian are able to utilize the services set out in the plan to correct the conditions which led to the court’s determination that the child is in need of protection or services, and if not, what other services might be appropriate; and (6) whether the child is receiving necessary services identified in the plan and whether those services are meeting the best interests of the child.” Minn. R. Juv. Prot. P. 41.06 subd. 2 (c)(1)-(6).

in protective supervision in the home of the custodial parent does not count towards calculating permanency timelines; time spent in protective supervision in the home of a non-custodial parent does count.¹⁶

Practice Tips:

- Protective supervision may be an option when the client wants to be reunified with his or her parent, but the other parties have reservations about closing the case.¹⁷
- If your client does not wish to live with his or her parent(s), find out why, and consider moving for a modification of the disposition.
- Check whether the case plan¹⁸ addresses the issues that gave rise to agency involvement and whether the case plan proposes solutions that your client feels would be helpful. Monitor progress on the case plan.

Protective Supervision Compared to Other Dispositions

Trial Home Visit¹⁹

Trial home visits may be used to reunify children with their families after they are separated by an out-of-home placement.²⁰ Trial home visits and protective supervision may be used in conjunction with each other; the court may order a trial home visit and then follow it with a period of protective supervision.²¹

Like protective supervision, in a trial home visit, the child lives with his or her parent and receives services from the agency, but unlike protective supervision, the agency retains custody of the child.²² A trial home visit may be terminated at any time by the agency to “protect the child’s health, safety or welfare.”²³ A trial home visit lasts a maximum of six months.²⁴ Reviews occur at least every ninety days.²⁵ Time on a trial home visit does count toward determining when permanency hearings will be held.²⁶ If the child is on a trial home visit at the time when twelve months have passed since the child was removed from the home of his or her custodial parent, the agency may file a report updating the court on the progress of the trial home visit and the agency’s reasonable efforts to finalize the child’s reunification with his or her parent, rather than filing a permanency petition.²⁷

Practice Tips:

¹⁶ Minn. Stat. § 260C.503 subd. 3(a) (2012).

¹⁷ Wattenburg, Esther & Troy, Kate. Protective Supervision: An Exploratory Study. At Appendix 4. (July 30, 2006). Located at: http://www.cehd.umn.edu/SSW/cascw/attributes/PDF/publications/Protective%20Supervision_An%20Exploratory%20Study.pdf (Last Accessed 11/29/12) (hereinafter “Wattenburg Protective Supervision Study”).

¹⁸ Minn. Stat. § 260C.201 subd. 6(b) (2012).

¹⁹ Trial home visit may be abbreviated as “THV.”

²⁰ See Wattenburg Protective Supervision Study at 6. See generally, Trial Home Visits: Strengthening Reunification Practices. Practice Notes, Center for Advanced Studies in Child Welfare, School of Social Work, University of Minnesota. March 2006, Issue #18. Located at http://www.cehd.umn.edu/SSW/cascw/attributes/PDF/practicenotes/PN_18_TrialHomeVisits.pdf (Last Accessed: 11/29/12).

²¹ See Wattenburg Protective Supervision Study at 13.

²² Minn. Stat. § 260C.201 subd. 1(a)(3)(i)-(iii) (2012).

²³ *Id.* at subd. 1(a)(3)(iv)-(vi).

²⁴ *Id.* at subd. 1(a)(3).

²⁵ Minn. R. Juv. Prot. P. 41.06 subd. 2(b)(3) (requiring review to “determine whether the trial home visit continues to be necessary”).

²⁶ Minn. Stat. § 260C.503 subd. 3(a) (2012).

²⁷ Minn. Stat. § 260C.503 subd. 3(a), (c) (2012).

- Make sure your client understands the time limitations on a trial home visit.
- While your client is on a trial home visit, monitor the services being offered to the family by the agency, and the family's utilization of those services. Talk with your client to see if there are services your client would want that are not yet in place, such as family therapy.
- Clients on protective supervision or on trial home visits may not have a space where they can speak freely on the phone. It may be more effective to meet with them while they are at school, or you may take them for a walk or to get a snack.

Transfer of Legal Custody to the Agency with Out-of-Home Placement (Foster Care)

Compared to protective supervision, when the child is in an out-of-home placement, Minnesota law places several additional requirements on the agency and the court.²⁸ These include the creation of an out-of-home placement plan,²⁹ permanency progress reviews,³⁰ as well as other administrative or court reviews of the child's current placement.³¹

When a child is placed outside of the home, the court requires the agency to make an "individualized determination of how the placement is in the child's best interests."³² When the agency considers foster care placements, "individuals related to the child by blood, marriage or adoption" should be considered first, followed by "individuals who are important friends with whom the child has resided or had significant contact."³³ The out-of-home placement must be the "least restrictive, most family-like, setting available which is in close proximity to the home of the parent or parents or guardian of the child when the case plan goal is reunification."³⁴ Time in foster care placements counts toward determining when permanency hearings will be held.³⁵

Practice Tips:

- Remember that a client could go from protective supervision to foster care, or vice versa.
- Refer to CLC's practice points on relative searches and permanency for more information.
- Volunteer attorneys should contact CLC with questions about moving for a change in foster care placement.

Modification of the Disposition

Any party can move for a modification of the disposition.³⁶ To modify a disposition by agreement, all of the parties must agree that "the modification is be in the best interests of the child and: (1) a change of

²⁸ See generally, Minn. Stat. §§§§ 260C.202; 260C.203; 260C.204; 260C.212 (2012).

²⁹ See generally, Minn. Stat. § 260C.212 (2012).

³⁰ See generally, Minn. Stat. § 260C.204 (2012).

³¹ See generally, Minn. Stat. §§ 260C.202 & 260C.203 (2012).

³² Minn. Stat. §260C.201 subd. 1(a)(2)(ii) (2012). See also, Minn. Stat. § 260C.212, subd. 2(b)(1)-(10) (2012) ("(b) Among the factors the agency shall consider in determining the needs of the child are the following: (1) the child's current functioning and behaviors; (2) the medical needs of the child; (3) the educational needs of the child; (4) the developmental needs of the child; (5) the child's history and past experience; (6) the child's religious and cultural needs; (7) the child's connection with a community, school, and faith community; (8) the child's interests and talents; (9) the child's relationship to current caretakers, parents, siblings, and relatives; and (10) the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement deems the child to be sufficient age to express preferences.").

³³ Minn. Stat. § 260C.212 subd. 2(a)(1)&(2) (2012). See also, Minn. Stat. § 260C.007, subd. 27 (2012) (defining both categories of individuals as relatives.)

³⁴ Minn. Stat. § 260C.212 subd. 1(c)(1)

³⁵ Minn. Stat. § 260C.503 subd. 3(a) (2012).

³⁶ Minn. Stat. § 260C.201 subd. 7 (2012); Minn. R. Juv. Prot. P. 41.06, subd. 4.

circumstances requires a change in the disposition...; or (2) the original disposition...is inappropriate.”³⁷ If a party objects to a proposed modification, a hearing is required.³⁸

Practice Tips:

- Moving for a modification of the disposition may be an avenue for addressing the wishes of your client.
- Volunteer attorneys should contact CLC with questions about motion practice in juvenile court.

Conclusion

A Child in Need of Protection or Services (CHIPS) proceeding is a life-altering experience for a child, and the choice of disposition can have a lasting effect. Though cases involving protective supervision are somewhat uncommon in Children’s Law Center of Minnesota’s caseload, it is important for volunteer attorneys to realize that protective supervision, a trial home visit, and foster care could all occur during the course of a single CHIPS proceeding. Volunteer attorneys can best advocate for their clients when they have a broad understanding of the potential dispositions.

³⁷ Minn. R. Juv. Prot. P. 41.06 subd. 4(a)(1)&(2).

³⁸ *Id.* at subd. 4(b).