

Family Finding From a Judicial Perspective

By Leonard P. Edwards

Judges need to know about family finding and they need to encourage the child protection system to use family finding whenever possible. One of the most difficult problems facing a judge in child protection proceedings is finding the right placement for a child. Sadly, too many children end up in foster care. This is unfortunate because the law favors placement with family members. The situation facing many judges is that family members have not been identified and foster care becomes a necessary fall-back position.

Judges can make a difference on this issue. First, judges need to be aggressive in identifying, locating, and engaging fathers. Many in the child protection system seem to prefer to work with mothers and ignore fathers.¹ Yet fathers can be a significant resource for the child and for the court. First, the father may be a possible placement. Second, the father's side of the family will, on average, consist of one-half of the child's relatives. This means the judge should insist that the social worker work to immediately identify and locate the father (or potential fathers) and give them notice of the legal proceedings. The agency must be prepared to provide testing to determine paternity at agency expense, and the court must appoint counsel to assist the father participate in the legal proceedings.

Second, the judge must insist that the social worker identify extended family from both sides of the family, mother's and father's.² Again this must be done immediately, right from the start of the case.³ A judge can monitor social worker actions by asking at the initial (shelter care) hearing about the steps taken to identify extended family members.

Third, the judge should invite all family members to come to court proceedings so that they can be identified, their wishes known, and the possibility of placement explored. The earlier this happens, the more likely that the family will respond. The judge should also encourage the agency to offer group decision making alternatives, such as family group conferencing, team decision making, and family team meetings.⁴ These meetings engage family members, significant persons in the child's life and professionals in an effort to find solutions to the problems facing the child. They are recognized best practices. Moreover, if extended family members are identified, there is a greater

¹ Harris, L., "Involving Nonresident Fathers in Dependency Cases: New Efforts, New Problems, New Solutions," *Journal of Law & Family Studies*, Vol. 9, No. 2, 2007; Malm, K., Murray, J., and Geen, R. *What About the Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers*, (Washington, D.C.: The U.S. Department of Health and Human Services, Office of the Assistant Secretary of Planning and Evaluation, 2006), at pp. ix, 85-86.

² Edwards, L., "Improving Juvenile Dependency Courts: Twenty-Three Steps," *Juvenile and Family Court Journal*, Vol. 48, No.4, (1997) 1 – 23, at p. 6.

³ On the emergency nature of child protection proceedings, see Edwards, L., "Achieving Timely Permanency in Child Protection Cases: The Importance of Frontloading the Court Process," *Juvenile and Family Court Journal*, Vol. 58, No. 2, (Spring, 2007).

⁴ Edwards, L., Sagatun, I., "The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families," *Juvenile and Family Court Journal*, Vol 58, No. 1, (Winter, 2007).

likelihood that family will be able to take responsibility for the placement and care of the child.

Fourth, the judge should be prepared to use the “no reasonable efforts” finding if the agency refuses to take immediate action to identify fathers or extended family members.⁵⁵ The agency has an obligation to take steps to prevent removal both before the initial hearing and prior to the dispositional hearing. Failing to identify possible relative placements is arguably a failure to take reasonable steps to find those placements.

Finally, the judge sets the tone for all child protection proceedings whether he or she knows it or not. When the judge assumes that the agency is doing all that is possible, no one will question the agency’s actions. But when the judge announces that identifying relatives is a high priority, when the judge asks questions about finding extended family members, when the judge arranges for trainings so everyone in the dependency system can learn about family finding, and when the judge makes “no reasonable efforts” findings when the agency fails to do so, the message to all members of the court process is clear: family finding is important and everyone should take steps to see that family is identified.

⁵⁵ Edwards, L., “Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980,” *Juvenile and Family Court Journal*, Vol. 45, No.3, (1994), 3-28 at 19-21.