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CASE NOTE

FAMILY LAW—Wyoming Courts Continue to Struggle with Termination of Parental Rights Cases: The Problem with “Reasonable Efforts”; *In re FM*, 163 P.3d 844 (Wyo. 2007).

Wendy S. Ross*

INTRODUCTION

When a state removes a child from a home due to abuse and/or neglect, federal law, specifically the Adoption and Safe Families Act, requires states to make reasonable efforts to reunify the child with his or her family, with some exceptions.¹ While Congress made a child’s safety the paramount concern, it did not further clarify what “reasonable efforts” means, leaving states to make their own interpretations.²

On September 1, 2002, a sheriff’s deputy performed a welfare check at BA’s (“Mother”) home.³ The sheriff’s deputy found two girls, ages eleven and thirteen, alone in the home.⁴ He found the home dirty and discovered a glass pipe in the master bedroom, indicating the use of methamphetamine.⁵ The deputy took the two girls into protective custody based on the home’s condition and because Mother left them alone.⁶ Mother’s other child, FM, age nine, visited his grandmother the day the deputy placed his sisters into protective custody.⁷ Nevertheless, the Department of Family Services (“DFS”) chose to place FM in protective custody as well.⁸ After DFS placed FM and his sisters in protective custody, the District Attorney’s office filed a neglect petition in juvenile court against Mother.⁹

* Candidate for J.D., University of Wyoming, 2010. I would like to thank my parents, Jan and Dale Ross, my little brother, Lucas Ross, and the rest of my family for supporting me through this adventure. I would also like to thank CASA of Laramie County for piquing my interest in this subject and inspiring me to write this piece.

¹ Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 326 U. TOL. L. REV. 321, 326–27 (2005).

² See Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State’s Burden under Federal Child Welfare Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259, 261–62 (2003).

³ *In re FM*, 162 P.3d 844, 846 (Wyo. 2007).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* Next, the sheriff’s deputy called a caseworker with the Department of Family Services (“DFS”). *Id.*

⁷ *Id.*

⁸ *FM*, 163 P.3d at 846.

⁹ *Id.* The State retained legal custody of all three children: FM and his two sisters, HA and BA. *Id.*

DFS developed a case plan, setting forth certain tasks for Mother to complete.¹⁰ DFS listed family reunification as the permanency goal for the children, meaning Mother would regain legal and physical custody of her children after completing the required tasks.¹¹ The case plan did not, however, contain a concurrent, or alternate, permanency goal for FM or his sisters.¹² Nor did DFS inform Mother of the possible termination of her parental rights if she did not comply and complete the tasks DFS assigned.¹³

In February 2003, the State arrested Mother for delivery and conspiracy to deliver methamphetamine, for which the State later convicted her.¹⁴ Mother received probation with a suspended sentence of incarceration for five to eight years.¹⁵ Mother then left Wyoming for approximately six or seven months, in violation of her probation.¹⁶ Mother surrendered to authorities in May 2004 and the State imposed Mother's suspended sentence of incarceration.¹⁷

¹⁰ *Id.* DFS defines case plan as: "a written plan, which guides all participants toward the safety, permanency, and well-being of the child." 049-240-001 WYO. CODE R. § 4(e) (Weil 2008). Mother began working on the case plan in December 2002. *FM*, 163 P.3d at 846.

¹¹ *FM*, 163 P.3d at 846. DFS defines permanency as: "an individualized, most appropriate, permanent home for the child, including but not limited to family reunification, relatives, adoption, guardianship, or independent living." 049-240-001 WYO. CODE R. § 4(t). The case plan identified eleven tasks for Mother to complete. Brief of Appellee at 8, *In re FM*, 163 P.3d 844 (No. C-06-14) (Wyo. Feb. 20, 2007), 2007 WL 2752854. The case plan required Mother to: (1) find and maintain appropriate housing; (2) find and maintain stable employment; (3) not engage in illegal activity or associate with persons who engage in illegal activity; (4) complete a substance abuse evaluation; (5) complete random urinalysis tests; (6) provide a substance free home for the family; (7) go to individual counseling sessions; (8) go to family counseling sessions with the children at least once per month; (9) complete DFS's "Love and Logic" parenting classes; (10) complete visitation with the children; and (11) provide financially for FM and his sisters, HA and BA, while they remained in state custody. *Id.*

¹² *FM*, 163 P.3d at 846. DFS defines concurrent plan as: "a case plan developed in addition to the child's main case plan with other possible outcomes to assure safety and permanency for the child." 049-240-001 WYO. CODE R. § 4(j).

¹³ *FM*, 163 P.3d at 846. Mother did not satisfactorily comply with the first case plan. *Id.* Mother lived in several different residences, had no proof of employment, and continued to have problems involving law enforcement. Brief of Appellee, *supra* note 11, at 8.

¹⁴ *FM*, 163 P.3d at 846.

¹⁵ Brief of Appellee, *supra* note 11, at 8. Mother would receive the incarceration sentence only if she violated any conditions of her probation. *Id.* As a condition of her probation, the state ordered Mother to complete the Transitions Residential Program, in which she enrolled, but ultimately left without completing. *FM*, 163 P.3d at 846.

¹⁶ Brief of Appellee, *supra* note 11, at 8. Mother attempted to maintain contact with her children from outside of Wyoming by sending them cards and clothing. *FM*, 163 P.3d at 846. She also maintained telephone contact with DFS. *Id.*

¹⁷ *FM*, 163 P.3d at 846. The criminal court supposedly reduced Mother's original suspended sentence of incarceration of five to eight years, to three to six years. Brief of Appellee, *supra* note 11, at 8 n.2.

The neglect proceedings against Mother continued in juvenile court during Mother's absence from the jurisdiction and subsequent time in prison.¹⁸ The next case plan listed adoption as the permanency goal for FM, and required Mother to voluntarily relinquish her parental rights to FM.¹⁹ The State filed a termination petition in February 2006.²⁰ The Laramie County District Court held the termination action trial in June 2006 and subsequently terminated Mother's parental rights to FM.²¹

Mother appealed the termination decision to the Wyoming Supreme Court.²² She claimed the State did not present sufficient evidence to support terminating her parental rights to FM and the Wyoming Supreme Court agreed.²³ Specifically, the court held the State did not provide clear and convincing evidence to show DFS made reasonable efforts toward family reunification before moving to terminate Mother's parental rights to FM.²⁴

This note analyzes the leading Wyoming cases regarding "reasonable efforts" towards family reunification in termination of parental rights cases.²⁵ More specifically, this note focuses on the lack of guidance Wyoming case law provides in determining what constitutes "reasonable efforts" towards family reunification.²⁶ Next, this note offers an analysis of the court's ruling in *In re FM* and argues the Wyoming Supreme Court correctly reversed the termination of Mother's parental rights.²⁷ Finally, this note will explore formulations of "reasonable efforts" towards family reunification in other states and recommend how Wyoming should proceed in determining what constitutes "reasonable efforts."²⁸

¹⁸ *FM*, 163 P.3d at 846. The DFS caseworker twice recommended, once in October 2003 and once in October 2004, that the State terminate Mother's parental rights to FM. *Id.* However, Mother did not admit to the allegations in the neglect petition until November 2004, at which point the court adjudicated Mother neglectful. *Id.* at 847. DFS did not develop another case plan in response to Mother's admission until June 2005. *Id.*

¹⁹ *Id.* at 847. DFS again recommended terminating Mother's parental rights to FM in January 2006. *Id.*

²⁰ *Id.*

²¹ *Id.* The State did not terminate Mother's parental rights to her daughters because both girls had a strong bond with their mother and desired to maintain a relationship with her. Brief of Appellee, *supra* note 11, at 8 n.1.

²² *FM*, 163 P.3d at 846.

²³ *Id.*

²⁴ *Id.* at 848.

²⁵ See *infra* notes 36–76 and accompanying text.

²⁶ See *id.*

²⁷ See *infra* notes 79–106 and accompanying text.

²⁸ See *infra* notes 111–91 and accompanying text.

BACKGROUND

Wyoming state law requires DFS to make reasonable efforts toward family reunification.²⁹ Wyoming state law closely resembles the federal law requiring reasonable efforts—the Adoption and Safe Families Act of 1997 (“ASFA”).³⁰ The statute does not, however, give much guidance in determining what constitutes “reasonable efforts.”³¹ It simply states, “reasonable efforts determinations shall include whether or not services to the family have been accessible, available, and appropriate.”³² At best, this statement identifies a few factors of what constitutes “reasonable efforts.”³³ While it appears the Wyoming legislature left it to the courts to provide further guidance in determining “reasonable efforts,” Wyoming courts have not taken full advantage of these opportunities.³⁴ The Wyoming Supreme Court has primarily upheld termination of parental rights decisions on reasonable efforts grounds, only reversing in a few cases, and in none of the cases has “reasonable efforts” gained a clearer meaning.³⁵

Wyoming Cases Upholding Termination of Parental Rights

The Wyoming Supreme Court, in upholding terminations of parental rights, gives some guidance in determining whether the State made reasonable efforts toward family reunification.³⁶ Two cases, *In re HP* and *In re MN*, are leading examples of what constitutes reasonable efforts toward family reunification in

²⁹ WYO. STAT. ANN. § 14-3-440(a) (2008). The statute states:

- (a) Except as provided in W.S. 14-2-309(b) or (c), reasonable efforts shall be made to preserve and reunify the family:
 - (i) Prior to placement of the child outside the home, to prevent or eliminate the need for removing the child from the child’s home; and
 - (ii) To make it possible for the child to safely return to the child’s home.

Id.

³⁰ Compare *id.*, with The Adoption and Safe Families Act, 42 U.S.C. § 671(a)(15)(B) (2008) (“Except as provided in subparagraph (d), reasonable efforts shall be made to preserve and reunify families—(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child’s home; and (ii) to make it possible for a child to safely return to the child’s home.”).

³¹ See WYO. STAT. ANN. § 14-3-440 (leaving “reasonable efforts” undefined).

³² *Id.* § 14-3-440(e).

³³ See MINN. STAT. ANN. § 260.012(h)(4) (West 2008) (listing available and accessible state provided services as one factor contributing to reasonable efforts).

³⁴ *E.g.*, *FM*, 163 P.3d 844; *In re HP*, 93 P.3d 982 (Wyo. 2004); *In re MN*, 78 P.3d 232 (Wyo. 2003); *MB v. Laramie County Dep’t of Family Servs.*, 933 P.2d 1126 (Wyo. 1997).

³⁵ See, *e.g.*, *FM*, 163 P.3d at 851 (reversing a termination of parental rights); *HP*, 93 P.3d at 992 (upholding a termination of parental rights); *MN*, 78 P.3d at 241 (upholding a termination of parental rights); *MB*, 933 P.2d at 1130 (reversing a termination of parental rights).

³⁶ See, *e.g.*, *HP*, 93 P.3d 982; *MN*, 78 P.3d 232.

Wyoming.³⁷ In *In re HP*, the State took two children into custody after their paternal grandparents informed DFS they could no longer care for the children.³⁸ Shortly thereafter, Mother received an eighteen to twenty-four month prison sentence for drug-related offenses.³⁹ Mother worked with DFS and a Multi-Disciplinary Team (“MDT”) on a case plan throughout her time in prison.⁴⁰ After Mother’s release from prison, DFS placed the children temporarily in Mother’s physical custody, while the State retained legal custody.⁴¹ Following what the juvenile court determined reasonable efforts to reunify the family, DFS pursued proceedings to terminate Mother’s parental rights.⁴² Mother subsequently challenged the court’s order.⁴³

The Wyoming Supreme Court held DFS made reasonable efforts to reunify the family and those efforts proved unsuccessful.⁴⁴ The MDT held six meetings to review Mother’s progress.⁴⁵ DFS developed four different case plans for Mother, each of which outlined specific objectives she needed to complete to regain physical and legal custody of her children.⁴⁶ During Mother’s time in prison, DFS arranged unsupervised, overnight visits with the children’s maternal grandmother, who took them to visit Mother.⁴⁷ After Mother’s release from prison, DFS allowed visitation.⁴⁸ DFS then allowed the children to live with Mother within two weeks

³⁷ *HP*, 93 P.3d 982; *MN*, 78 P.3d 232.

³⁸ *HP*, 93 P.3d at 984. Mother was in jail at the time. *Id.*

³⁹ *Id.* At an initial hearing on the neglect petition filed against Mother, she admitted to the allegations in the petition and the district court adjudicated Mother neglectful. *Id.* The children remained in DFS custody and the district court ordered DFS to make reasonable efforts towards family reunification. *Id.*

⁴⁰ *Id.* at 984–86. Wyoming requires the appointment of an MDT within ten days of the filing of a neglect petition. WYO. STAT. ANN. § 14-3-427 (2008). An MDT should consist of: the child’s parent or guardian, the child’s psychologist or other mental health professional, the district attorney, the guardian ad litem, the volunteer lay advocate, and the foster parent. *Id.* § 14-3-427(c). The MDT has the responsibility of making case planning recommendations. *Id.* § 14-3-427(e). With this purpose in mind, the MDT reviews the child’s history, school records, mental health records, DFS records, and other pertinent information. *Id.* § 14-3-427(d). While making recommendations, the MDT gives consideration to the child’s best interests, the family’s best interests, and costs of care. *Id.* § 14-3-427(f).

⁴¹ *HP*, 93 P.3d at 986. Mother gained her release from prison in March 2003. *Id.* However, Mother subsequently returned HP and NP to DFS, who then placed the children in a new foster home. *Id.* DFS continued to provide Mother with assistance and made a fourth case plan for her to complete. *Id.* at 987.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *HP*, 93 P.3d at 990.

⁴⁷ *Id.* These visits occurred at least twice monthly while Mother remained incarcerated. *Id.*

⁴⁸ *Id.*

of her release from prison.⁴⁹ After Mother returned the children to DFS, they offered her transportation so she could comply with the visitation schedule.⁵⁰ Additionally, DFS assisted Mother in finding suitable housing and referred her to counseling services.⁵¹ The court upheld the termination of Mother's parental rights, reasoning DFS made the aforementioned reasonable efforts to reunify the family and Mother failed to take advantage of the offered services.⁵²

The Wyoming Supreme Court also upheld a termination of parental rights in *In re MN*.⁵³ DFS's first involvement with this family came three years before the State filed a neglect petition against the mother.⁵⁴ After these services proved unsuccessful, the State commenced neglect proceedings against Mother.⁵⁵ DFS continued assisting Mother on her parenting issues for three more years.⁵⁶ Ultimately the State filed a petition to terminate Mother's parental rights.⁵⁷

The court upheld the termination of Mother's parental rights, reasoning DFS made reasonable efforts to reunify the family.⁵⁸ The State provided services for the family even before the filing of an abuse/neglect petition.⁵⁹ DFS continued to make efforts to help Mother, "providing her with Medicaid, money for daycare, food stamps, and other financial assistance."⁶⁰ After the juvenile court proceedings commenced, DFS created four separate case plans.⁶¹ DFS also invited

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *HP*, 93 P.3d at 990.

⁵² *Id.* Mother did not maintain employment or stable housing, she did not remain sober, and she left the children alone without adequate supervision on a few occasions. *Id.* at 986–87.

⁵³ *MN*, 78 P.3d at 241.

⁵⁴ *Id.* at 233, 235. DFS received reports of Mother giving her two-year old child alcohol in an infant cup and reusing diapers. *Id.* at 235. In 1997, DFS received reports of Mother feeding her child a diet of soda and candy, leaving the child with inappropriate caregivers, leaving the child to play in the street unsupervised, leaving the child unattended in a bar, and leaving the child unattended in a restroom, which led to the child smearing feces in the restroom. *Id.* In 1998, DFS received reports of the child arriving dirty to daycare, Mother and the child living in filth, and Mother feeding the child nothing but candy and soda. *Id.*

⁵⁵ *Id.* at 235. The neglect proceedings commenced after MN dropped her child off at a co-worker's house, unannounced, and left before anybody answered the door. *Id.*

⁵⁶ *See id.* at 237–38 (detailing the services DFS provided).

⁵⁷ *Id.* at 233–34, 236–38.

⁵⁸ *MN*, 78 P.3d at 238. These efforts included: scheduling and paying for evaluations in substance abuse, psychological, neuro-psychological, and parenting areas; providing Mother with transportation; and assisting Mother with procuring low-income housing applications. *Id.*

⁵⁹ *Id.* at 236. DFS attempted to offer services to this family as early as 1997 and made a voluntary case plan for Mother in 1998. *Id.* DFS also made a second case plan for Mother before the State filed any charges against Mother in juvenile court. *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

an individual experienced with handling brain injuries to the MDT to attempt to help Mother.⁶² DFS continued to provide services, but Mother ultimately refused all services and became uncooperative, including failing to visit the child regularly.⁶³ The court concluded DFS made reasonable efforts toward family reunification, of which Mother failed to take advantage.⁶⁴

Wyoming Cases Reversing Termination of Parental Rights

Other than *FM*, the Wyoming Supreme Court overturned only one other termination of parental rights case in recent years on reasonable efforts grounds: *MB v. Laramie County Dept. of Family Services*.⁶⁵ This case illustrates an example of DFS's failure to provide reasonable efforts toward family reunification.⁶⁶ Shortly after LB's birth, the State placed LB in protective custody because Mother needed to treat her schizophrenia.⁶⁷ DFS created a case plan listing the permanency goal for LB as family reunification.⁶⁸ However, the case plan did not inform Mother of the consequences of failing to comply with the case plan, i.e., the State could terminate her parental rights.⁶⁹ Mother continued to express interest in LB, but DFS informed her that she should worry about regaining custody of another child in Texas first and then worry about regaining custody of LB from Wyoming.⁷⁰ DFS subsequently filed a petition to terminate Mother's parental rights to LB.⁷¹ Ultimately, the State issued an order terminating Mother's parental rights.⁷²

⁶² *Id.* at 237. A doctor diagnosed MN with a cognitive disorder and a moderate to severe brain injury. *Id.*

⁶³ *MN*, 78 P.3d at 237–38.

⁶⁴ *Id.*

⁶⁵ *MB*, 933 P.2d at 1130.

⁶⁶ *See id.*

⁶⁷ *Id.* While pregnant, Mother did not take her schizophrenia medication. *Id.* at 1128. The State involuntarily placed Mother in the Wyoming State Mental Hospital ("State Hospital") in Evanston, Wyoming shortly after LB's birth. *Id.* A few months later Mother contacted DFS inquiring about LB and requesting pictures of him. *Id.* DFS did not take LB to the State Hospital to visit. *Id.*

⁶⁸ *Id.* The case plan listed short-term goals for Mother, including voluntarily taking her medication, working to treat her mental illness, and working with the Immigration and Naturalization Service ("INS") to become a legal citizen. *Id.*

⁶⁹ *Id.* Mother may not have known about the first case plan. *Id.* INS deported Mother to Mexico after her release from the State Hospital. *Id.* DFS subsequently received a letter from Mother in December 1993 in which she expressed interest in LB; however, DFS could not contact Mother at the address given in the letter. *Id.* Mother again contacted DFS in June 1994. *Id.* at 1128. About a year after LB's birth DFS learned of Mother's placement in a mental facility in Texas and of the birth of another child. *Id.* Mother contacted DFS again in August and September 1994. *Id.*

⁷⁰ *MB*, 933 P.2d at 1128. Again, DFS did not inform Mother that she risked termination of her parental rights to LB. *Id.* Mother again contacted DFS in October 1994 expressing interest in LB and asking for pictures. *Id.*

⁷¹ *Id.*

⁷² *Id.* at 1129.

The Wyoming Supreme Court reversed the termination of Mother's parental rights to LB.⁷³ First, the court stated DFS had the responsibility of attempting to rehabilitate Mother and reunify the family, including providing needed services.⁷⁴ Then it articulated that DFS did not make reasonable efforts to reunify the family because DFS did not provide Mother with a written copy of the case plan.⁷⁵ Finally, the court noted DFS did not provide Mother with any notification that the State could terminate her parental rights to LB.⁷⁶

While Wyoming state law requires DFS to make reasonable efforts toward family reunification, the statute does not provide much guidance for determining "reasonable efforts."⁷⁷ The Wyoming Supreme Court has had several opportunities to clarify "reasonable efforts," but has yet to take full advantage of such opportunities.⁷⁸

PRINCIPAL CASE

The Wyoming Supreme Court rendered the *In re FM* decision in December 2007.⁷⁹ Justice Golden delivered the unanimous majority opinion.⁸⁰ BA, the mother, ("Mother") asked the court to reverse the Laramie County District Court's decision to terminate her parental rights to FM.⁸¹ Mother primarily challenged the sufficiency of the state's evidence supporting the termination of her parental rights.⁸²

The court began its discussion with the standard of proof required to terminate a parent's right to his or her children: clear and convincing evidence.⁸³ The United States Supreme Court articulated a high standard of proof required for termination of parental rights cases because parents have a fundamental right to raise their children.⁸⁴ Here, the court determined the State did not provide clear and convincing evidence of DFS's reasonable efforts toward family reunification.⁸⁵

⁷³ *Id.* at 1130.

⁷⁴ *Id.*

⁷⁵ *MB*, 933 P.2d at 1130.

⁷⁶ *Id.*

⁷⁷ *See supra* note 29.

⁷⁸ *See supra* notes 36–76 and accompanying text.

⁷⁹ *FM*, 163 P.3d at 844.

⁸⁰ *Id.*

⁸¹ *Id.* at 845–46.

⁸² *Id.* at 846.

⁸³ *Id.* at 847.

⁸⁴ *Santosky v. Kramer*, 455 U.S. 745, 768–70 (1982).

⁸⁵ *FM*, 163 P.3d at 848.

On this basis, the court overturned the termination of Mother's parental rights to FM.⁸⁶

The court reiterated the statutory requirement of DFS to provide reasonable efforts toward family reunification after the State has removed children from their homes due to abuse or neglect.⁸⁷ The court relied on several facts indicating DFS failed to provide these efforts.⁸⁸ First, DFS only developed two case plans for Mother.⁸⁹ Also, the State did not present evidence of services provided to Mother to help her complete her case plans.⁹⁰

Second, DFS began recommending the termination of Mother's parental rights to FM in October 2003, while the case plan still listed family reunification as the permanency goal.⁹¹ While Mother remained incarcerated, family reunification remained difficult, but not impossible.⁹² DFS still had an obligation to provide reasonable efforts toward family reunification, regardless of Mother's incarceration status.⁹³

Finally, the court focused on DFS's lack of effort to facilitate communication between FM and Mother.⁹⁴ DFS could not achieve family reunification without such communication.⁹⁵ However, no evidence indicated DFS made attempts to facilitate any communication.⁹⁶ Mother wrote letters to FM, but DFS made no attempt to ensure FM received these letters.⁹⁷

The court relied on *In re HP* as an example of what constitutes reasonable efforts.⁹⁸ In *HP*, as in *FM*, the mother remained incarcerated.⁹⁹ However, in *HP*, DFS made it possible for the children to visit their mother while she remained incarcerated by arranging overnight visits with the children's grandmother.¹⁰⁰

⁸⁶ *Id.* at 851.

⁸⁷ *Id.* at 848.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *FM*, 163 P.3d at 848.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *FM*, 163 P.3d at 848.

⁹⁶ *Id.*

⁹⁷ *Id.* DFS let FM's aunt decide the fate of the letters. *Id.*

⁹⁸ *Id.* at 848 n.3.

⁹⁹ *Id.*

¹⁰⁰ *FM*, 163 P.3d at 848 n.3.

DFS also provided four separate case plans for HP in an attempt to reunite the family.¹⁰¹ In comparison, DFS provided FM's mother with two case plans, only one of which listed family reunification as the goal.¹⁰² Also, in *HP*, the MDT met six times to assist Mother with completing her case plan.¹⁰³ The *FM* court stated the district court did not appoint an MDT for FM's mother as required by state law.¹⁰⁴

The Wyoming Supreme Court reversed the order from the Laramie County District Court terminating Mother's parental rights to FM.¹⁰⁵ The court found the State did not prove DFS's attempts at providing reasonable efforts toward family reunification by clear and convincing evidence.¹⁰⁶

ANALYSIS

The Wyoming Supreme Court correctly reversed the order terminating Mother's parental rights to FM.¹⁰⁷ This analysis provides guidance to practitioners and caseworkers in Wyoming in determining what constitutes "reasonable efforts."¹⁰⁸ It analyzes statutes and case law from Minnesota and Connecticut which clarify reasonable efforts toward family reunification.¹⁰⁹ Finally, this analysis evaluates whether reasonable efforts remains a problem in Wyoming.¹¹⁰

Minnesota

Minnesota's legislature took an active role in providing the courts with guidance on what constitutes "reasonable efforts."¹¹¹ The applicable statute begins by requiring courts to ensure the social service agency makes reasonable efforts at family reunification.¹¹² Then, it emphasizes reasonable efforts should include

¹⁰¹ *Id.*

¹⁰² *Id.* at 848.

¹⁰³ *Id.* at 848 n.3.

¹⁰⁴ *Id.* at 847 n.2. The statute states the following, "Within ten (10) days after a petition is filed alleging a child is neglected, the court shall appoint a multidisciplinary team. Upon motion by a party, the court may add or dismiss a member of the multidisciplinary team." WYO. STAT. ANN. § 14-3-427(b).

¹⁰⁵ *FM*, 163 P.3d at 851.

¹⁰⁶ *Id.* at 848; *see supra* notes 79–104 and accompanying text.

¹⁰⁷ *See infra* notes 153–75 and accompanying text.

¹⁰⁸ *See infra* notes 111–91 and accompanying text.

¹⁰⁹ *See id.*

¹¹⁰ *See infra* notes 192–99 and accompanying text.

¹¹¹ Crossley, *supra* note 2, at 298.

¹¹² MINN. STAT. ANN. § 260.012(a).

“culturally appropriate services.”¹¹³ The heart of the statute provides a six-factor test for courts to consider when determining if reasonable efforts have been made.¹¹⁴ It requires provided services: (1) take into account the child’s safety; (2) meet the child’s and family’s needs; (3) complement the family’s culture; (4) remain available and accessible to the family; (5) continue consistently and in a timely manner; and (6) are realistic under the circumstances.¹¹⁵ These factors provide guidance to courts because they limit the need for judicial interpretation.¹¹⁶

The Minnesota courts have applied this six-factor test to determine whether the State has satisfied its requirement to make reasonable efforts toward family reunification in many termination of parental rights cases.¹¹⁷ Through application, each factor has gained a clearer meaning.¹¹⁸

The first factor looks at whether the services provided to the family take into account the child’s safety.¹¹⁹ One court determined services addressing a parent’s chemical dependency took into account the child’s safety because the original incidents of neglect occurred due to the mother’s chemical dependency.¹²⁰ Another court found the suspension of visitation between the mother and her children reasonable because the visits emotionally damaged the children.¹²¹ Finally, a court found it reasonable to deny an increase in supervised visits because the parents physically abused the children during visits.¹²²

The second factor asks whether provided services adequately met the child’s and family’s needs.¹²³ Courts have interpreted this factor to mean services provided

¹¹³ *Id.*

¹¹⁴ *Id.* § 260.012(h)(1)–(6).

¹¹⁵ *Id.*

¹¹⁶ Crossley, *supra* note 2, at 303.

¹¹⁷ *E.g.*, In re Welfare of Child of S.H., No. A07-808, 2007 WL 3343078, at *4–5 (Minn. App. Nov. 13, 2007), *review denied* (Minn. App. Jan. 19, 2008); In re Welfare of Children of C.R.P., Nos. A06-1609, A06-1635, 2007 WL 447241, at *4–5 (Minn. App. Feb. 13, 2007); In re Welfare of Child of J.D.C., Nos. A06-436, A06-654, 2006 WL 3290612, at *4–5 (Minn. App. Nov. 14, 2006), *review denied* (Minn. App. Jan. 16, 2007).

¹¹⁸ *See infra* notes 119–44 and accompanying text (discussing each factor of the Minnesota six-factor test to determine whether the state has made reasonable efforts toward family reunification).

¹¹⁹ MINN. STAT. ANN. § 260.012(h)(1).

¹²⁰ In re Welfare of N.V., No. C8-00-1949, 2001 WL 682589, at *2–3 (Minn. App. June 19, 2001).

¹²¹ In re Welfare of Children of F.M.P., No. A07-1162, 2008 WL 223677, at *4 (Minn. App. Jan. 29, 2008), *review denied* (Minn. App. March 26, 2008).

¹²² In re Welfare of A.P., No. C7-99-171, 1999 WL 710623, at *2 (Minn. App. Sept. 14, 1999), *review denied* (Minn. App. Nov. 23, 1999).

¹²³ MINN. STAT. ANN. § 260.012(h)(2).

address the conditions which led to the removal of the children from the home.¹²⁴ One court found the second factor satisfied when a mother with chemical dependency issues gained a referral for a chemical dependency assessment and received coordination for outpatient treatment.¹²⁵ Another court found services adequate to meet the family's needs when the State provided the mother with several mental health services after the State removed her child due to the mother's initial suicide attempt and hospitalization.¹²⁶ Finally, a court held this factor fulfilled when the State identified issues affecting the mother's ability to manage her son's diabetes.¹²⁷

The third factor inquires as to whether provided services complement the family's culture.¹²⁸ One court found culturally appropriate services when the State referred the mother to African American family services.¹²⁹ Another court held culturally appropriate services included obtaining interpreters for each service provided and efforts by service providers to comprehend the Oromo culture.¹³⁰ Finally, a court found culturally appropriate services involved obtaining an interpreter whenever possible.¹³¹

The fourth factor assesses the availability and accessibility of the services offered.¹³² One court found provided services available and accessible when a mother received in-home visits and transportation to out-of-home appointments because she did not have a driver's license.¹³³ Another court held available and accessible services included providing such services while the father remained incarcerated.¹³⁴ Finally, a court found available and accessible services when a mother and father had to use the same counselor.¹³⁵

¹²⁴ *E.g.*, In re Welfare of Children of J.K., No. A05-203, 2005 WL 1804904, at *2 (Minn. App. Aug. 2, 2005); In re Whelan, Nos. A03-247, A03-275, 2003 WL 22952207, at *2 (Minn. App. Dec. 16, 2003), *review denied* (Minn. App. Feb. 17, 2004); In re Welfare of Child of Kuschill, No. C0-03-311, 2003 WL 22176702, at *2 (Minn. App. Sept. 23, 2003).

¹²⁵ *J.D.C.*, 2006 WL 3290612, at *4.

¹²⁶ *Kuschill*, 2003 WL 22176702, at *3.

¹²⁷ In re Welfare of Child of E.L., No. C6-01-938, 2002 WL 798260, at *6 (Minn. App. April 30, 2002). The mother received medical assistance to manage her son's diabetes, a mental health evaluation and subsequent medication, and lessons in parenting skills. *Id.*

¹²⁸ MINN. STAT. ANN. § 260.012(h)(3).

¹²⁹ *S.H.*, 2007 WL 3343078, at *5.

¹³⁰ In re Welfare of M.A., No. CX-01-98, 2001 WL 881642, at *7 (Minn. App. Aug. 7, 2001).

¹³¹ In re Welfare of T.N.L., No. C4-00-1947, 2001 WL 379114, at *4 (Minn. App. April 17, 2001).

¹³² MINN. STAT. ANN. § 260.012(h)(4).

¹³³ *J.K.*, 2005 WL 1804904, at *3.

¹³⁴ In re Welfare of Children of M.L.G., No. A03-1571, 2004 WL 1098715, at *3 (Min. App. May 18, 2004).

¹³⁵ *Whelan*, 2003 WL 22952207, at *3. The court reasoned the county had access to only one therapist, therefore, providing both parents with the same therapist constituted the use of all available and accessible resources. *Id.*

The fifth factor requires reasonable efforts to include consistent and timely services.¹³⁶ A court found reasonable efforts even though in-home services commenced two years after the district court ordered these services.¹³⁷ Courts generally give this factor less weight than the other five factors, finding the reasonable efforts requirement satisfied when services provided fail to continue consistently or in a timely manner.¹³⁸ However, another court relied on the consistency language of the factor to prove reasonable efforts in another case.¹³⁹ The court reasoned the services provided met the consistency requirement because the caseworker visited the mother over fifty times and continued to initiate services after the mother's repeated failure to attend appointments.¹⁴⁰

The sixth and final factor addresses whether services provided are realistic under the circumstances.¹⁴¹ The courts in Minnesota have generally defined this factor in the negative by detailing what constitutes unrealistic services.¹⁴² One court determined it unrealistic to provide family therapy when visits with the mother emotionally damaged the children.¹⁴³ Another court found it unrealistic for the parents to participate in counseling programs with the child until each parent received treatment for his/her chemical dependency problems.¹⁴⁴

Wyoming should adopt this six-factor test to determine if the State has met its reasonable efforts requirement.¹⁴⁵ Minnesota's factors give guidance and allow for the individualized analysis of each case.¹⁴⁶ Termination of parental rights cases revolve around the specific facts of each case, which these factors take into account.¹⁴⁷ It is important that Wyoming courts adopt this test to clarify what constitutes reasonable efforts.¹⁴⁸ While statutory reform provides

¹³⁶ MINN. STAT. ANN. § 260.012(h)(5).

¹³⁷ *A.P.*, 1999 WL 710623, at *2. The court reasoned the services, even delayed, did not help the parents' progress and the county provided the parents with numerous other services, nullifying the untimely nature of the in-home counseling services. *Id.*

¹³⁸ *See id.* (dismissing the fact the county waited two years to administer court-ordered services).

¹³⁹ *J.K.*, 2005 WL 1804904, at *3.

¹⁴⁰ *Id.*

¹⁴¹ MINN. STAT. ANN. § 260.012(h)(6).

¹⁴² *See, e.g., F.M.P.*, 2008 WL 223677, at *4; *In re Welfare of Child H.E.P.*, No. A07-299, 2007 WL 1982259, at *5 (Minn. App. July 10, 2007).

¹⁴³ *F.M.P.*, 2008 WL 223677, at *4.

¹⁴⁴ *H.E.P.*, 2007 WL 1982259, at *5.

¹⁴⁵ *See supra* notes 111–44 and accompanying text (discussing Minnesota's six-factor test for determining whether the State has met the reasonable efforts requirement).

¹⁴⁶ Crossley, *supra* note 2, at 303.

¹⁴⁷ *Id.* at 298.

¹⁴⁸ *Id.*

courts with factors to consider, the courts ultimately interpret and apply them.¹⁴⁹ Those applications and interpretations of statutes direct the court's evaluation of reasonable efforts toward family reunification.¹⁵⁰ The court, by adopting this six-factor test will clarify the "reasonable efforts" standard the lower level district courts utilize during termination of parental rights proceedings.¹⁵¹ Using this test, Wyoming courts can proceed with termination of parental rights cases where necessary and appropriate, without fear of reversal.¹⁵²

Application of Minnesota's Six-Factor Test to FM

FM neither solves, nor further complicates, the law surrounding reasonable efforts.¹⁵³ *FM* merely adds to the mystery of what constitutes "reasonable efforts."¹⁵⁴ While the *FM* court came to the correct conclusion, the court could have articulated its decision more clearly if it used this six-factor test to analyze whether the State made reasonable efforts toward family reunification.¹⁵⁵ The first factor requires services to take into account the child's safety.¹⁵⁶ Here, DFS accounted for FM's safety by removing him from his mother's care and allowing only visitations with Mother.¹⁵⁷ The second factor asks whether services provided adequately met the child's and family's needs.¹⁵⁸ DFS provided Mother the opportunity to receive assistance with her substance abuse issues by having her complete a drug evaluation.¹⁵⁹ However, no evidence indicates Mother received assistance in finding appropriate housing or employment.¹⁶⁰ Also, DFS did not provide services to facilitate communication between Mother and FM.¹⁶¹ Evidence indicates the services did not adequately meet the family's needs.¹⁶² The third factor inquires as to whether the services complemented the family's culture.¹⁶³ It does appear that FM's family needed any special cultural consideration in the services DFS provided.¹⁶⁴

¹⁴⁹ Bean, *supra* note 1, at 331.

¹⁵⁰ *Id.*

¹⁵¹ Crossley, *supra* note 2, at 298.

¹⁵² See *infra* notes 153–75 and accompanying text.

¹⁵³ See *FM*, 163 P.3d 844 (failing to further clarify reasonable efforts).

¹⁵⁴ *Id.*

¹⁵⁵ See *supra* notes 79–106 and 111–44 accompanying text.

¹⁵⁶ MINN. STAT. ANN. § 260.012(h)(1).

¹⁵⁷ Brief of Appellee, *supra* note 11, at 7–8.

¹⁵⁸ MINN. STAT. ANN. § 260.012(h)(2).

¹⁵⁹ Brief of Appellee, *supra* note 11, at 8.

¹⁶⁰ *FM*, 163 P.3d at 848.

¹⁶¹ *Id.*

¹⁶² See *supra* notes 159–61 and accompanying text.

¹⁶³ MINN. STAT. ANN. § 260.012(h)(3).

¹⁶⁴ See *FM*, 163 P.3d 844 (lacking any evidence of the family's cultural needs).

The fourth factor assesses the availability and accessibility of the services offered.¹⁶⁵ Before Mother's incarceration, there is little evidence indicating whether the services provided remained available and accessible.¹⁶⁶ However, during Mother's incarceration, it appears DFS provided few, if any, available and accessible services.¹⁶⁷ These facts show the State did not provide available and accessible services to Mother.¹⁶⁸ The fifth factor requires consistent and timely services.¹⁶⁹ Since DFS provided few, if any, needed services while Mother remained incarcerated, the fifth factor does not appear met.¹⁷⁰ The sixth and final factor addresses whether services provided are realistic under the circumstances.¹⁷¹ It seems unrealistic to require Mother to complete a multitude of tasks without assistance.¹⁷² Also, DFS had previously facilitated communication between an incarcerated mother and her children.¹⁷³ Based on the foregoing, it appears DFS did not provide services realistic under the circumstances.¹⁷⁴ Weighing the factors, one arrives at the same conclusion as the court: the State did not make reasonable efforts toward family reunification.¹⁷⁵

Connecticut

Like Wyoming and Minnesota, the Connecticut statute requires the Department of Children and Families ("DCF") to make reasonable efforts toward family reunification.¹⁷⁶ The statute provides that courts should consider the timeliness of services provided, the nature of services provided, and the availability of services provided towards family reunification.¹⁷⁷ While this statement lacks

¹⁶⁵ MINN. STAT. ANN. § 260.012(h)(4).

¹⁶⁶ See *FM*, 163 P.3d 844 (lacking evidence as to whether services remained available and accessible to Mother).

¹⁶⁷ *Id.* at 848.

¹⁶⁸ See *supra* notes 166–67 and accompanying text.

¹⁶⁹ MINN. STAT. ANN. § 260.012(h)(5).

¹⁷⁰ *FM*, 163 P.3d at 848.

¹⁷¹ MINN. STAT. ANN. § 260.012(h)(6).

¹⁷² *FM*, 163 P.3d at 848.

¹⁷³ *HP*, 93 P.3d at 990.

¹⁷⁴ See *supra* notes 172–73 and accompanying text.

¹⁷⁵ See *supra* notes 153–74 and accompanying text.

¹⁷⁶ CONN. GEN. STAT. ANN. § 17a-111b(a) (2006).

¹⁷⁷ *Id.* § 17a-112(k)(1). The statute states:

(k) Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding:

- (1) The timeliness, nature, and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent.

Id.

the specificity of the Minnesota statutes, the Connecticut courts have provided guidance as to what constitutes reasonable efforts by interpreting the statute.¹⁷⁸

The Appellate Court of Connecticut decided *In re Eden F* in 1998, shortly after the Adoption and Safe Families Act of 1997 (“ASFA”) took effect.¹⁷⁹ Ann F, mother to Eden and Joann, had a long history of psychiatric problems.¹⁸⁰ Ann’s involvement with DCF began five days after Ann gave birth to her first child, Eden.¹⁸¹ Ann’s involvement with DCF continued until the State moved to terminate Ann’s parental rights to Eden and her second daughter, Joann.¹⁸² The trial court subsequently terminated Ann’s parental rights to both Eden and Joann.¹⁸³

The appellate court recognized the duty DCF had to make reasonable efforts toward family reunification.¹⁸⁴ The legislature failed to define both “reasonable” and “efforts” in the statute.¹⁸⁵ The court stressed that determining whether the State has made reasonable efforts towards family reunification depends on the consideration of the specific circumstances of each case.¹⁸⁶ The court’s most important point defined reasonable efforts as “doing everything reasonable, not possible.”¹⁸⁷ This definition, while not as expansive as the definition from the Minnesota statutes, still provides value because it gives the courts further guidance on what constitutes reasonable efforts.¹⁸⁸

Connecticut’s courts indicate the State has a high burden to carry in making reasonable efforts.¹⁸⁹ Wyoming can meet this high burden by specifically enumerating the efforts DFS made in each case, showing they made every reasonable effort, but not necessarily every possible effort.¹⁹⁰ While ASFA does not require this high level of specificity, Wyoming courts should use this high level to ensure a lower rate of erroneous terminations of parental rights at the trial level.¹⁹¹

¹⁷⁸ Crossley, *supra* note 2, at 302.

¹⁷⁹ *In re Eden F*, 710 A.2d 771 (Conn. App. 1998), *rev’d on other grounds*, 741 A. 2d 873 (Conn. 1999).

¹⁸⁰ *Id.* at 774.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 779.

¹⁸⁴ *Eden F*, 710 A.2d at 782.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 783.

¹⁸⁷ *Id.*

¹⁸⁸ Crossley, *supra* note 2, at 298.

¹⁸⁹ *Id.* at 301.

¹⁹⁰ *Id.* at 302.

¹⁹¹ *Id.* at 301, 302.

Is Reasonable Efforts Really a Problem in Wyoming?

As noted previously, the Wyoming Supreme Court has only reversed two terminations of parental rights cases because of the State's failure to prove reasonable efforts toward family reunification in recent years.¹⁹² One reason for the absence of termination of parental rights cases at the appellate court level resides in the fact that a majority of the families in the child welfare system live in poverty.¹⁹³ Statistics show children in lower income families face a greater risk of harm due to abuse or neglect than children who do not live in lower income families.¹⁹⁴ Since many families in the child welfare system live in poverty, many parents must rely on state-appointed counsel.¹⁹⁵ However, the United States Supreme Court found indigent parents do not have an absolute right to counsel in termination of parental rights cases.¹⁹⁶ The Court articulated the states should decide whether to appoint counsel on a case-by-case basis in termination cases.¹⁹⁷ Wyoming does not guarantee indigent parents the right to counsel in termination of parental rights cases.¹⁹⁸ If a parent cannot afford to provide his or her own counsel at a termination of parental rights proceeding, the parent will likely not have the resources to get a lawyer to appeal an adverse termination decision.¹⁹⁹

¹⁹² See *supra* note 65 and accompanying text.

¹⁹³ Diana Telfer, Case Note, In re T.M.: *Who Protects the Indigent Parents?*, 6 J.L. & FAM. STUD. 161, 168, 170 (2004); Candra Bullock, Comment, *Low-Income Parents Victimized by Child Protective Services*, 11 AM. U. J. GENDER SOC. POL'Y & L. 1023, 1025, 1037 (2003); Jim Moye & Roberta Rinker, *It's a Hard Knock Life: Does the Adoption and Safe Families Act of 1997 Adequately Address Problems in the Child Welfare System?*, 39 HARV. J. ON LEGIS. 375, 376 (2002); Sarah H. Ramsey, *Children in Poverty: Reconciling Children's Interests with Child Protective and Welfare Policies a Response to Ward Doran and Roberts*, 61 MD. L. REV. 437, 438 (2002); Paul Anthony Wilhelm, Note, *Permanency at What Cost? Five Years of Imprudence under the Adoption and Safe Families Act of 1997*, 16 NOTRE DAME J.L. ETHICS & PUB. POL'Y 617, 631 (2002); Cynthia R. Mabry, *Second Chances: Insuring that Poor Families Remain Intact by Minimizing Socioeconomic Ramifications of Poverty*, 102 W. VA. L. REV. 607, 609 (2000).

¹⁹⁴ ANDREA J. SEDLAK & DIANE D. BROADHURST, THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT 8–10 (1996).

¹⁹⁵ See Bullock, *supra* note 193, at 1037 (explaining that indigent parents cannot afford private legal representation).

¹⁹⁶ *Lassiter v. Dep't. of Soc. Servs. of Durham County*, 452 U.S. 18, 31–32 (1981) (holding that parents in termination of parental rights cases do not have an absolute right to counsel and that states should decide on a case-by-case basis whether to provide a parent state-appointed counsel in a termination of parental rights proceeding).

¹⁹⁷ *Id.*

¹⁹⁸ WYO. STAT. ANN. § 14-2-318(a) (2008). The statute states in relevant part:

(a) The court *may* appoint counsel for any party who is indigent.

Id. (emphasis added).

¹⁹⁹ See Bullock, *supra* note 193, at 1037 (noting that indigent parents cannot afford the high legal costs of child abuse/neglect cases).

CONCLUSION

Parents have a fundamental right to raise their children and the State cannot take that right away until the State gives a parent a reasonable amount of time and services towards rehabilitation.²⁰⁰ DFS had an obligation to provide reasonable efforts toward family reunification to Mother and FM.²⁰¹ DFS did not fulfill its obligation.²⁰² Here, DFS did not give Mother a chance to continue to raise her children, even when it was obvious she very much desired to remain a part of their lives.²⁰³ The Wyoming Supreme Court correctly reversed the order terminating Mother's parental rights, based on DFS's lack of reasonable efforts towards family reunification.²⁰⁴ However, the court again declined to clarify what constitutes "reasonable efforts."²⁰⁵ Wyoming courts should adopt the six-factor test articulated in the Minnesota statutes.²⁰⁶ With this test, Wyoming courts can proceed with termination of parental rights cases where necessary and appropriate, without fear of reversal.²⁰⁷ Additionally, DFS and other partners in the child welfare system will be better versed on "reasonable efforts," hopefully creating more permanency for children in Wyoming.²⁰⁸

²⁰⁰ See *supra* note 84 and accompanying text.

²⁰¹ See *supra* note 87 and accompanying text.

²⁰² See *supra* notes 88–106 and accompanying text.

²⁰³ See *supra* note 97 and accompanying text.

²⁰⁴ See *supra* notes 105–06 and accompanying text.

²⁰⁵ See *supra* notes 79–106 and accompanying text.

²⁰⁶ See *supra* notes 111–44 and accompanying text.

²⁰⁷ See *supra* notes 145–75 and accompanying text.

²⁰⁸ See *id.*