



A Child Welfare/Immigration Case Example

NOTE: This question was sent by an attorney defending a deported father's parental rights on the Immigrant Children's Lawyers Network listserv. Comments came from two retired child welfare directors and a dependency attorney. Since these individuals do not have authority to represent their current or prior organization, their identifications have been removed. Questions regarding child welfare/immigration cases can be directed to the Migration and Child Welfare National Network housed at the Jane Addams College of Social Work, University of Illinois at Chicago: www.mcwnn.uic.edu

CASE EXAMPLE – Deported father's rights and the child welfare system

QUESTION: I am a Parents' Rights lawyer in a northeastern state. My knowledge of immigration law is unreliable, so I am asking for the kind advice of this listserv community. My client and his wife have a 4-year-old daughter. During her infancy, the father was removed to Mexico since he had entered the U.S. illegally, and now faces the 10-year ban. Meantime, he and his wife divorced and the U.S.-born wife remained in the U.S. with their daughter who is now 3, along with her other children. As a result of her struggles with drugs, the state child welfare department has petitioned to take jurisdiction over all her children and is seeking to have her parental rights terminated and to place the daughter in non-family adoption. The children are all currently in foster care. Some of the problems facing the father include the daughter does not speak Spanish and the father's English is poor. He is also unable to provide for her financially.

My strategy will be to argue: 1) it is a violation of his due process rights to have his parental rights terminated without a finding that he himself neglected or abused his children, and 2) it is contrary to the best interest of his daughter to terminate her father's parental rights. Here are my questions:

1. Is there literature or possible expert witnesses to establish that a child benefits from her relationship with her dad, even though it is pretty much confined to weekly phone calls and photos of him in her room?
2. Although no criminal charges will be brought against him, it is likely that there will be a finding of neglect for purposes of the child welfare proceedings as a result of his "abandonment due to deportation," and this information will wind up on the state's Child Abuse Registry. (This Registry is accessible only to law enforcement). Would this finding and placement on the Registry adversely affect his application to enter the U.S. legally after his 10-year ban expires?

COMMENTS FROM DEPENDENCY ATTORNEY:

This is a difficult case, but to be clear, proof of parental unfitness, and a judicial finding of that, must by law precede any consideration of the child's "best interests." Relevant to this case, there was a recent high profile case of a deported father who is being reunified with his U.S. citizen children (see Associated Press article, "North Carolina judge orders return of 3 U.S.-born children to their deported Mexican father, November 27, 2012).

A big issue will be how much contact (i.e., letters, phone calls, presents to his child, etc.) he has had or tried to have with his daughter over the past three years. Having no, or insignificant, contact can be used as evidence of abandonment. Also, has he been paying any child support (if not, why not)? What crimes may he have committed in the U.S. or in Mexico? That may be viewed by the court as relevant to his ability to safely care for his child. What would the home situation/supervision of the child be like if the child was returned to him in Mexico, or to his (paternal) relatives? Is there a paternal relative who is ready, willing, and able to provide safe care to the child (as might be documented in a home study)?

It is important in this case that the mother have good legal representation, assuming she wants to be reunified with her child, and if that is successful, the courts might not then terminate the father's rights.

The American Bar Association in partnership with American Humane Association conducted a five-year fatherhood/child welfare project (though it didn't specifically address immigration issues there is a lot of useful information at this site on father involvement in the child welfare intervention process):

<http://www.americanhumane.org/children/programs/fatherhood-initiative/qic-fatherhood-toolkit/>

COMMENTS #1 AND #2 CAME FROM TWO RETIRED CHILD WELFARE DIRECTORS. COMMENT #3 IS FROM AN IMMIGRATION/CHILD WELFARE CONSULTANT.

COMMENT #1: I think the best possibility is reunification with the mother but it appears this is not a strong possibility per the description above. Can she get into treatment? Removal seems to have been fairly recent so hopefully reunification can be considered and she would be amenable to it.

Regarding the contact issue and father, even if other issues could be resolved, his ability to care for his daughter based on his current circumstances sounds problematic. If he is financially unable to provide support for his child, it is likely a home study in Mexico will not recommend him as a suitable placement. Are there available relatives in either the U.S. or Mexico who could be considered? This information seems to be missing and placement with them if possible should be considered and could be an option so that parental termination would not be needed (assuming legal guardianship can be a permanency option).

From the description, the father's case doesn't seem strong unless he can prove involvement and contact with his daughter such as visitation, letters child support, etc.

COMMENT #2: The only thing I would add in addition to the comments above is that there needs to be two court-reviewed family reunification service plans. In addition, further clarifications need to be conducted regarding the on-going relationship between the mother and father. Is he the father to all the children (or was there a "de facto" parenting role)? My

assumption is that all the children are U.S. born citizens so the matter then becomes reunification with the U.S. citizen mother or the undocumented, deported father. In the event there are other fathers involved, their interests need to be assessed. It is important to follow how these decisions are being sorted out by the child welfare agency for each child, including placement considerations (i.e., maternal grandparent or other relations and the reasons for the recommendations of the child welfare agency). It is also critical to get some history of this father's involvement with the child welfare system, including an assessment of available extended family. Is immigration the only issue with this father? Likewise, how has the father been legally notified of all relevant child welfare/dependency hearings? And, what is the status of the dependency proceeding timelines? What sort of placement is currently in existence? Is this a foster-adoptive placement? Are all the siblings placed together?

I always favor some sort of family conference or team-decision making on cases like this. From my readings of this case, the psycho-social dynamics are really the critical missing piece, especially if the goal is stabilizing the children's lives with the least amount of disruption. Here are some articles on family conferencing and team decision making:

Using Family Group Conferencing to Help Immigrant Children and Families (American Humane Association):

<http://www.americanhumane.org/assets/pdfs/children/fgdm/pc-fgdm-immigrant-children-families.pdf>

Immigration Dynamics in Team Decision Making (Family to Family/Annie E Casey Foundation):

<http://www.f2f.ca.gov/res/pdf/ImmigrationDynamicsTDMwkshpNov06.pdf>

COMMENT #3: The comments above regarding evidence by "letters, calls and presents" made me think of some things when I worked with refugees involved with the child welfare system. While in the U.S., letters, calls and presents may seem like standard, expected contact between a caring parent and child, this isn't necessarily the case for parents from other cultures, but I don't always think this is recognized by the child welfare system. Some parents are illiterate in both their first language and in English, some don't actually know how to address a letter for U.S. delivery, or they may think that a letter written in their home language will not be able to be communicated to a young child if the foster family and caseworker don't know the language (especially when it is a foreign language other than Spanish). With phone calls, they may have trouble getting beyond the caseworker due to language barriers and may give up. And they may not be in the practice of giving presents as we do in the U.S.

I think for some families, the "system" part of the child welfare system is so bewildering, and so foreign to have government involved in family life, that they are paralyzed by confusion and despair. And typically there are other factors (poverty, trauma or mental illness, acculturation) which are either complicating or causal elements of the child welfare involvement.

A second type of cultural misunderstanding involves help-seeking behavior that is interpreted as something else, such as abandonment. For example, a teen mom who leaves her baby at a shelter to go seek help from her family/community with whom she can speak her first language, but this action is interpreted by child welfare workers as abandonment. Or a family whose children have been placed in foster care decides to leave their county or state in order to go to a place where there are more members of their ethnic community, thinking that they will be able to get more help in seeking the return of their children (and get help from people who understand

their language and culture). However, they don't realize that this is interpreted as abandonment of their children and greatly complicates the court process.

There are no easy answers to these situations, but they are reminders that our understandings and assumptions about someone's behaviors may have cultural, linguistic and/or acculturative meaning that is different from what we assume.

In one case where the family moved out of state, and the court moved for termination of parental rights, the family was asking lots of people about how to get their children back, but they were asking the wrong people – they weren't working through the court system, they were asking for help at an ethnic community based organization, which didn't know how to begin to help them. So the court assumed the family had just taken off, meanwhile the family was trying to get help but in a very ineffective way.

I also think about cultures that show more indirect affection (perhaps through aunts/uncles), but when family systems are disrupted/separated, and those extended relatives are not around, there may be a gap in how affection/attachment is traditionally conveyed to a child.