



The Doctrine of Last Minute Efforts

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Equipping Foster Parents for Gracious Advocacy Series, Part III

If you are a foster parent, you may have had the experience of showing up to a Termination of Parental Rights trial, only to hear from the Guardian *ad litem* or DHR Case Worker that the trial has been continued because one of the parents started working services.

We have written elsewhere why these delays are bad for the children, unmerciful to the children, and contrary to governing law. In Part III of our series, we want to equip foster parents to keep their children's cases on track towards timely permanency.

What you see below is an almost verbatim copy of what we filed in a recent TPR case. One party sought to derail the TPR at the last minute because one parent began showing interest in the child one week before the TPR trial - after one year of abandonment. By God's grace, the trial went forward and TPR was granted.

The doctrine of "last-minute efforts" crystalized in the 2003 Alabama Court of Civil Appeals opinion, *J.D. v. Cherokee County DHR*, 858 So.2d 274 (Ala. Civ. App. 2003).

In *J.D.* the child was born to unmarried parents. The Department became involved because the mother, the child, and J.D. were living in an mobile home without running water or utilities. The child had developmental delays.

On an unannounced visit, the case worker noted that there was a loaded handgun on the table.

After the initial ISP, the mother made little to no progress, and even moved out of state. After thirteen (13) months of being in care, the Department moved for TPR. The Appellate Court noted:

"The mother returned from North Carolina in April 2002. She and J.D. made some improvements to their mobile home, installed a septic tank, and obtained electricity. She completed parenting and anger-management classes and attended counseling sessions. The mother's counselor stated that she was 'making an effort.' The mother visited the child every week."

At the hearing, the case worker testified that after returning back from moving out of state the mother made some progress with the ISP goals. However, the mother was still inattentive to the child. In addition, the mother's residence was still unfit for occupation.

The juvenile court terminated the natural parents rights, stating in part,

“In spite of last minute efforts to finally try to comply with ISP recommendation, [the mother] has not demonstrated any skill whatsoever to achieve a trust and honest bond with the said child.” (emphasis added)

The Court of Civil Appeals upheld the trial court's order and opined that:

“Those findings indicate that the juvenile court determined that the mother's progress toward achieving the goals for reunification was the result of **“last-minute efforts”**—efforts the court may have found unconvincing in light of its further finding that the mother “lied consistently to social workers and other professionals in their efforts to assist [her] in the reunification process.” (emphasis added)

J.D.'s doctrine of last-minute efforts has been upheld and re-affirmed by numerous appellate decisions.¹

If your case fits the facts of *J.D.* you could close your argument this way: “In the case at hand, any efforts the parents may have expended or demonstrated to build a significant relationship with the child or complete services prescribed by the Department, are nothing more than last-minute efforts made in anticipation of litigation.”

As you zealously advocate for your child, please remember three things. First, a gentle answer is worth more than a team of attorneys. A ruler is persuaded by patience. Work on your likability with DHR staff. Someone who is likable is more persuasive.

Second, have confidence in your position as a foster parent. There is a universal principle about foster parents and the children they care for. It's as old as time, rooted in the fabric of fallen creation, universal to all times, contexts, and cultures.

¹ *A.M.F v. Tuscaloosa County DHR*, 75 So.3d 1206 (Ala. Civ. App. 2011) (“As we stated above, the juvenile court could have determined that, to the extent the mother may have allegedly improved her condition, those efforts were merely last-minute efforts undertaken in anticipation of the impending termination-of-parental-rights trial.”); *T.G. v. Houston County DHR* 6 So.3d 1182 (Ala. Civ. App. 2008) (“the evidence indicates that the mother's progress toward achieving the goals for reunification was nothing more than the result of “last-minute efforts”); etc.

Samuel Pufendorf expressed this immovable law well in his 1660 treatise on *The Elements of Universal Jurisprudence*. Pufendorf delves to the very depths of the question. What rights should a natural parent have over a child they abandon vis-à-vis, the person who has raised the child as their own:

“[I]f some parents, ... not only violating the law of nature but also overcoming common affection, are unwilling to nurture their offspring, and cast it forth, they cannot longer claim any right over it, nor can they demand from it longer any office due, as it were, to a parent. ...

“But he who has brought up an exposed infant succeeds to the rights of the parent ... nor can [the child] go back under the authority of his natural parents [if the child’s caregiver is unwilling].”

Third, we have no guarantee of justice in this life. Your firm confidence (hope) must always rest in the reality that Christ will come back and wipe away every tear from every eye - he will deliver perfect justice. This alone can anchor our souls as we seek to love the children with whom we have been entrusted.