

IN THE JUVENILE COURT OF _____ COUNTY, TENNESSEE

STATE OF TENNESSEE)
DEPARTMENT OF CHILDREN'S SERVICES,)
Petitioner,)
)
v.)
)
PARENT 1 and)
PARENT 2)
Respondents,)
)
IN THE MATTER OF:)
CHILD 1, DOB: _____)
CHILD 2, DOB: _____)
Children under the age of 18 years)

Case No. _____

**MOTION TO FIND LACK OF REASONABLE EFFORTS AND TO RETURN
CHILD(REN) TO PARENT(S) CUSTODY**

Comes now, _____ and moves this Honorable Court to return the child(ren) to the custody of the parent(s) in this case. The parent(s) are in substantial compliance with the permanency plan set forth by the Department and ratified by this court without reasonable efforts of the Department of Children Services.

Parent(s) have undergone _____ treatment, are gainfully employed, maintain contact with child/ren as much as the Department permits. Parents have rehabilitated the conditions which brought the child/ren into state custody.

Upon entering state custody, the child/ren slept in a DCS office building for days or weeks without the necessities of a bed, blanket, or personal hygiene products, a shower or food which is not the least restrictive alternative or consistent with a "family like setting." While in custody, the child/ren has/have suffered from neglect of educational services, violence, physical/sexual abuse, and/or harassment from the Department contracted placement staff or foster home and other children in custody. Since entering state custody, the child/ren's

educational needs are not being met. The child/ren's medical needs have not been met by the Department. All of this is to the detriment of the mental, physical, and emotional well-being of the child(ren).

There has been no contact with the parents by the case manager for months in reference to the family's case. There have been no CFTMs and no permanency plan devised within a reasonable amount of time as required by law. The child/ren have been in numerous transition homes and/or foster home placements for many months. Parent(s) have been denied visitation due to Department staffing shortages.

Wherefore, Premises Considered, Petitioners Request:

1. That the superior parental rights of the Petitioners to parent their children be restored and the child/ren be returned to the custody and care of the Petitioners without further court reviews or departmental oversight;
2. That this Court find that the State of Tennessee, Department of Children's Services (DCS) has failed to make reasonable efforts on this matter;
3. That this matter come before the court on _____ day of _____, 2024 for a hearing on this motion; and
4. Any and all just and proper relief.

Respectfully submitted,

Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was forwarded by U.S. Mail, postage prepaid, to the following persons on this the _____ day of _____, _____:

DCS ATTORNEY, _____

Address: _____

OTHER PARENT, _____

Address: _____

Attorney

NOTICE OF HEARING

This motion is set for hearing on the ____ day of _____ 2024 at ____ AM.

The location of such hearing will be held in the Juvenile Court located at address:

_____.

Respectfully submitted,

Attorney

MEMORANDUM OF LAW SUPPORTING MOTION TO FIND NO REASONABLE EFFORTS

Reasonable Efforts required in order to achieve permanency for the child, the state is required to make reasonable efforts, if it can be done safely, to:

- ☐ Prevent the need for removal of the child from the child's family (family preservation);
- ☐ Enable a child in custody to return home (reunification); or
- ☐ Reach another permanency goal for the child, as identified in the permanency plan.

Under Tennessee law, "reasonable efforts" is defined as "the exercise of reasonable care and diligence by the Department to provide services related to meeting the needs of the child and the family." T.C.A. § 37-1-166(g). Reasonable efforts are aimed at helping children achieve permanency. They are provided to children and parents or guardians in an attempt to achieve the permanency goal identified for the child.

Reasonable efforts are a crucial component of foster care because these efforts represent the responsibilities of the state and agencies to effectuate permanency. Each child's permanency plan must clearly articulate the services (efforts) to be provided. In the case of biological parents whose children have been removed, reasonable efforts provide a second chance at learning parenting skills that will enable them to keep their children safe and to nurture their children's healthy development.

The obligation to provide reasonable efforts was first imposed by the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, 42 USC § 670, et seq. The Adoption and Safe Families Act of 1997 (ASFA), P.L. 105-89, clarified the reasonable efforts requirements of the earlier law, and specifically exempts certain types of cases from the reasonable efforts requirements. ASFA emphasizes that the child's health and safety shall be the paramount concern of all efforts made toward permanency.

Reasonable Efforts requirement at every hearing where the child is placed or remains in custody, the court must make a finding of reasonable efforts. This finding should address what efforts (or services) were provided by the Department to prevent removal of the child, to reunify the family, or to achieve another permanency goal for the child. T.C.A. § 37-1-166(a) and (g). The Department bears the burden of showing that it made reasonable efforts by providing services that were reasonable in duration, scope, and intended effect, given the family's and child's circumstances.

The Department must provide an Affidavit of Reasonable Efforts, answering the following questions:

☐ Is removal necessary in order to protect the child, and if so, what is the specific risk or risks to the child or family that necessitates removal of the child?

☐ What specific services are necessary to allow the child to remain in the home or to be returned to the home?

☐ What services have been provided to assist the family and the child so as to prevent removal or to reunify the family?

☐ Has the Department had the opportunity to provide services to the family and the child, and, if not, then what are the specific reasons why services were not provided?

T.C.A. § 37-1-166(b) and (c). The juvenile court reviews the Affidavit of Reasonable Efforts, but must also make an independent determination based on evidence presented in court. In making a reasonable efforts determination, the court must find, based on all the facts and circumstances, whether:

- ☐ There is no less drastic alternative to removal;

☐ Reasonable efforts have been made to prevent the need for removal or make it possible for the child to return home; and

☐ Continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child. T.C.A. § 37-1-166(d). If, after hearing the proof and reviewing the Affidavit of Reasonable Efforts, a court is not satisfied with the efforts made by the Department, the court may make a finding that the Department did not provide reasonable efforts.

The court, as part of its review process, is required to make findings as to whether the Department is making reasonable efforts toward achieving the goal identified in the permanency plan in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child. T.C.A. § 37-1-166(g)

RESPECTFULLY SUBMITTED:

Attorney