

DISPOSITION: Why Start at the End?

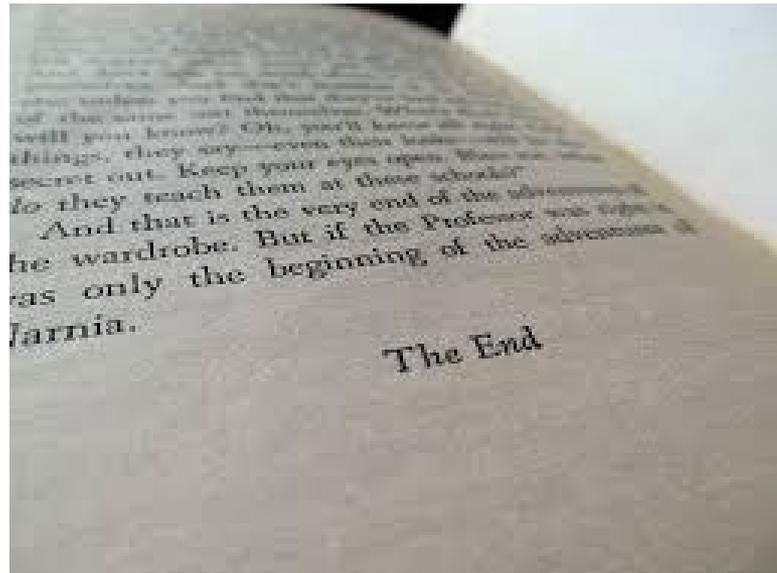
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Objective

- ▶ Attorneys will:
 - ▶ Know the relevant statutes, case law and evidence rules that apply at disposition
 - ▶ Be able to develop a game plan for preparing for disposition throughout the lifecycle of a TPR case
 - ▶ Think creatively about ways to tell their client's story



What kind of story is this anyway?



Why develop your Dispo game plan now?

- ▶ Timelines – you may not have enough time if you lose fact-finding
- ▶ Tie your theme for disposition into your pre-trial motions and trial defense
- ▶ Discovery – you're conducting it now, so it's now or likely never

And BESIDES.....



What matters most to your client?



Developing your case for disposition

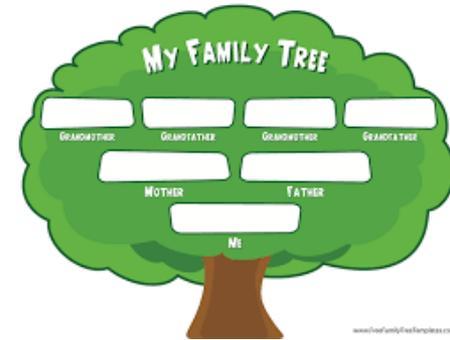
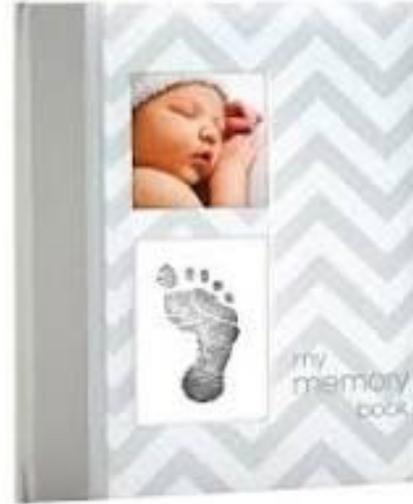
1. Know your client's story and the story of the child's family.
2. What has your client done since filing of the TPR petition?
3. What does social science research say about the child's future?
4. What are the alternatives?
5. Know the statutory factors and relevant case law!



Client's story and the story of the child's family

▶ Ideas for Interview:

- ▶ Family Tree
- ▶ Pictures
- ▶ Lifebook
- ▶ Autobiography
- ▶ Reach out to extended family
- ▶ What does the discovery say?



What has your client done since filing of the TPR petition?

- ▶ **Non-enumerated, but Relevant Factors:** The Court may also consider factors favorable to the parent, “including prognosis for the parent's markedly changed behavior.” Sheboygan County D.H.S.S. v. Julie A.B., 2002 WI 95, ¶29, 255 Wis. 2d 170, 658 N.W.2d 402.
 - ▶ Witnesses – service providers, probation agent, other family members
 - ▶ Reports/certificates of services completed
- ▶ Consider hiring an expert



What does social science research say about the child's future?

- ▶ It is not a given that the child will be better off without his or her parent!
- ▶ Wealth of social science research about attachment theory, child development & special adoption issues
- ▶ An expert might help with this as well



What are the alternatives?

- ▶ Show the judge what you want him or her to do
 - ▶ Any party can present evidence relevant to the issue of disposition and can make alternative dispositional recommendations to the court. Wis. Stat. § 48.427(1). The court can terminate parental rights *only after the finding that all alternatives have been explored* and that termination serves the best interest of the child. A.B. v. P.B., 151 Wis. 2d 312, 322, 444 N.W.2d 415 (Ct.App. 1989).
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Statutory Factors – 48.426

- ▶ Court shall consider these but not limited to these 48.426(3)
 - ▶ (a) Likelihood of adoption
 - ▶ (b) Age and health of child, both at time of disposition and time of removal
 - ▶ (c) Substantial relationships with parent or other family members and whether it would be harmful to sever those relationships
 - ▶ (d) Wishes of the child
 - ▶ (e) Duration of separation of parent and child
 - ▶ (f) Whether the child will enter in more stable and permanent family relationship
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Evidentiary Issues

- ▶ Court should err on side of admitting evidence: “At disposition, the Court ‘should welcome’ evidence and testimony relevant to the best interest determination, and the Court must consider the factors set out in section 48.426(3) of the Wisconsin Statutes.” Steven V. at ¶ 27, Julie A.B. at ¶ 29, Wis. Stats § 48.427 (1).
- ▶ Hearsay is Admissible Wis. Stat. § 48.299(4)(b).



What creative ways have you
contested disposition?
How do you prepare for disposition
early on in a case?