



OFFICE OF THE ATTORNEY GENERAL

# 2006 CHILD PROTECTION CASE LAW SUPPLEMENT

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## ABANDONMENT

### ***In re Anthony J., 2006 Conn. Super. LEXIS 312, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Feb. 1, 2006, Jongbloed, J.)***

Petition to terminate parental rights, alleging failure to rehabilitate as to both parents, and abandonment as to father. Father remained incarcerated for a significant period of time and was unavailable to the child. Father had not seen the child since he was five months old. Mother was unable to maintain housing or employment and had ongoing substance abuse issues. The child had been in care, in the same foster home, since he was three days old. Termination was in child's best interest.

### ***In re Justin T., Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 12, 2006, Taylor, J.)***

TPR petition brought against the father alleging failure to rehabilitate, no ongoing parent child relationship and abandonment. Mother previously consented to the TPR. DCF proved its grounds by clear and convincing evidence. Father failed to maintain any reasonable degree of interest with his son. During the time that the child was in DCF's care, the father failed to inquire and follow up with the child's well being, and did not send gifts, cards or letters. Father continued with substance abuse, criminal activity, mental health and parenting deficiencies. Father failed to complete the provisions of the specific steps and participate in referrals made by DCF to address these problems. Child has no present or positive memories of his father. Child's therapist indicated that the father does not exist in the child's world. TPR is in the best interest of the child.

### ***In re Janet C., 2006 Conn. Super. LEXIS 1890, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 15, 2006, Bear, J.)***

TPR petitions filed alleging failure to rehabilitate by the respondent parents and abandonment and no ongoing parent child relationship as to the respondent father. Trial court found in favor of DCF. Mother failed to gain insight into child sexual abuse and learn techniques to acquire skills necessary to protect her children. Children showed no bond with the mother during visits and would become upset at mother's attempts to engage with them. Children would display negative behaviors following visits that would continue for days. Father continued to struggle with controlling his anger and antisocial behavior. Father's psychological profile is compounded by his drinking and substance abuse, which makes him a danger to children. Father's attendance at programs was minimal and sporadic. Father did not call DCF to inquire about his

children's well-being. Children were bonded to their foster parents and look to them for support. TPR is in their best interest.

***In re Joshua N., 2006 Conn. Super. LEXIS 1891, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 21, 2006, Bear, J.)***

The trial court found that the mother abandoned the child and that there was no parent child relationship between the two. Mother missed over fifty percent of her scheduled visits with the child. On the occasions when the visit did take place, a majority of the time, the visits either ended early or the mother arrived late. In addition, the mother failed to rehabilitate – continued to abuse substances; unaddressed mental health problems; domestic violence and irresponsibility with several pregnancies since the child's placement with DCF.

***In re Kaisson C., 2006 Conn. Super. LEXIS 2281, Superior Court for Juvenile Matters, Child Protection Session at Middletown (July 26, 2006, Bear, J.)***

Mother consented to the petition. Father failed to appear at trial. Based on the evidence presented to the court, it found that the child was neglected and that the father abandoned the child in that he failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child. In addition, the trial court found that there was no parent child relationship between the two. As such, TPR was in the child's best interest.

***In re Desirae R., 2006 Conn. Super. LEXIS 2764, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 11, 2006, Bear, J.)***

Because of positive visitation relationship between father and children, DCF did not establish no on going parent child relationship. Abandonment and failure to rehabilitate proven as to father.

***In re Edlinna F., 2006 Conn. Super. LEXIS 2761, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 13, 2006, Bear, J.)***

Petition brought to terminate the parental rights of the mother and father. Father consented to the TPR petition. Trial court found by clear and convincing evidence that DCF proved by its grounds of failure to rehabilitate and abandonment as to the mother.

Mother failed to appear at trial. Her counsel was present. During the seventeen months that the children were in the care of DCF, the mother was either incarcerated or whereabouts unknown. Mother's criminal activity revolved around possession of drugs and drug paraphernalia. One month prior to the TPR trial, the mother was arrested for possession of drug

paraphernalia. Mother failed to appear in court, and at the time of the TPR trial, had an outstanding warrant for her arrest. Mother visited with her children less than six times. She did not call DCF to inquire as to their well being, nor did she send gifts, cards or letters. The children were placed together in the same foster home since their removal from the mother and were bonded to the foster family. Foster family was willing to adopt all three children. TPR was in the children's best interests.

***In re Carlos G., 2006 Conn. Super. LEXIS 3122, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Oct. 3, 2006, Bear, J.)***

TPR petitions filed alleging failure to rehabilitate, abandonment and no ongoing parent child relationship as to the respondent parents and the additional ground of abandonment as to the two fathers. Trial court found in favor of DCF on the ground of failure to rehabilitate and abandonment as to the respondent parents, no ongoing parent child relationship as to the fathers, and no ongoing parent child relationship as to the mother with the child, Carlos. Trial court denied of no ongoing parent child relationship as to the mother and the children, Luis and Noemi.

The children were in care for almost 3 ½ years. Carlos's father appeared once in Connecticut from Puerto Rico and had a visit with the child. Carlos's father has not maintained contact with DCF to inquire about Carlos, and has never sent gifts, cards or letters to him. Noemi's father maintained sporadic contact with DCF. He visited only twelve times with Noemi in three years.

Mother struggled with substance abuse and mental health. Mother had periods of compliance with treatment and remaining sober, but continually relapsed. Her most recent use was two months before the TPR with heroin. Mother needed an in-patient program but refused to attend despite DCF's efforts and referrals. At the time of trial, mother was not engaged in mental health or substance abuse treatment.

Carlos was fearful of returning to live with his mother and would rather live in the woods than with her. Noemi sees her mother as a bad person and did not want to be returned to her care. Luis has specialized needs and behavioral problems requiring a therapeutic setting. TPR was in the children's best interest.

**ABUSE**

**ACCIDENTAL FAILURE OF SUIT**

## ADJUDICATION

## ADMINISTRATIVE APPEALS

### ***Christopher R. v. Commissioner of Mental Retardation, 277 Conn. 594 (2006)***

State agency, DMR, did not exceed its statutory authority when considering all available tests in determining whether plaintiff was eligible for services. The decision to deny eligibility was supported by substantial evidence in the record.

## ADMINISTRATIVE LAW

## ADMISSION BY A PARTY OPPONENT

## ADOPTION/OPEN ADOPTION

## ADOPTION AND SAFE FAMILIES ACT

## ADOPTION ASSISTANCE AND CHILD WELFARE ACT

## ADVERSE INFERENCE

## AGGRIEVEMENT

## AMERICANS WITH DISABILITIES ACT

## APPEAL

## ARRESTS

## ATTORNEY

## ATTORNEY CLIENT PRIVILEGE

## ATTORNEY'S FEES

## ATTORNEY GENERAL

## ATTORNEY GENERAL'S OPINION

## BAIL

## BATTERED CHILD SYNDROME

## BEST EVIDENCE

## BEST INTEREST OF THE CHILD

### ***In re Anthony E., 96 Conn. App. 414, cert. denied, 280 Conn. 914 (2006)***

The children were adjudicated uncared for while in mother's care and placed in the primary custody of their father. Parents remained joint guardians. Subsequently, mother filed a motion for a modification of the order and sought physical custody of the children. The trial court found that there was a material change in the mother's circumstances and gave the parties shared physical custody. The Appellate Court held the trial court's findings of a material change in the mother's circumstances was supported by the evidence: she had adequate living conditions, was compliant with her mental health program, had her substance abuse issues under control, was employed, and had adequate income and child care arrangements. However, the trial court abused its discretion by modifying the custody order without making a finding that doing so was in the children's best interests. The order of the trial court was reversed. The case was remanded with direction to deny the mother's motion to modify the court's order as to custody of the children.

### ***In re Rachel J., 97 Conn. App. 748 (2006)***

Mother appealed the termination of her parental rights based upon DCF's coterminous petitions. She claimed that the trial court improperly concluded that one child sustained a serious bodily injury under Conn. Gen. Stat. § 17a-112(j)(3)(F) and erroneously found that it was in the child's best interest to terminate her parental rights. The trial court judgment was affirmed.

On appeal, mother challenges whether child sustained a "serious physical injury." Appellate Court notes that the term is not defined in our child welfare statutes and declines to apply criminal definitions. The court looks to the dictionary definition of serious meaning "to cause considerable distress, anxiety or inconvenience." In assaulting the child, the mother caused a serious injury that resulted in a severe fracture of the child's elbow. The seriousness was manifested by the mother's tactical decision to delay medical treatment in order to avoid DCF intervention.

Appellate Court also found termination of parental rights in child's best interest as child had strong negative feelings about the mother. Child was also exposed to physical, sexual and emotional abuse and best interest served by terminating mother's parental rights.

***In re Davonta V., 98 Conn. App. 42, cert. granted, 280 Conn. 947 (2006)***

Mother's sole claim on appeal was that trial court improperly concluded that termination of parent's rights was in Davonta's best interests. Davonta was 14 years old at the time of the TPR trial, living with a foster family who is committed to being a long-term placement for him, but who has not made a decision to adopt. Mother had a long-term history of instability due to drug abuse, mental illness and criminal behavior, which resulted in her incarceration. She failed to stabilize her life despite DCF intervention and services. The majority of the Appellate Court held that the trial court's analysis of the child's best interest properly focused on mother's inability to provide a stable home and the child's positive and significant improvements since his placement with a foster family.

Judge Schaller, dissenting, concluded that termination was inappropriate in this situation as the child's best interest is not served by terminating his legal relationship with the mother. In moving to do so, DCF has failed to protect the child and punished both parent and child. Closure at the expense of the child's birth relationships is meaningless. Permanency to a 14 year old whose only remaining blood relationships are terminated is meaningless. DCF chose termination against the advice of Dr. Berkowitz and the child's guardian ad litem.

**BIAS**

**BURDEN OF PROOF**

**SEE "STANDARD OF PROOF"**

**BUSINESS RECORDS EXCEPTION**

**CHILD ABUSE PREVENTION AND TREATMENT ACT**

**CHILD ABUSE REGISTRY**

## CHILD'S ATTORNEY

### ***In re Christina M.*, 280 Conn. 474 (2006)**

Termination petition granted on failure to rehabilitate grounds. Parents appeal, calling ineffective assistance of counsel for their children. Supreme Court held that parents have standing to challenge the adequacy of their children's reparation because the rights of the parents are inextricably intertwined with those of their children. Parents, however, could not prevail on their claim that the trial court erred in failing *sua sponte* to appoint a guardian ad litem to advocate the children's wishes. There was insufficient evidence to support that the trial court knew or reasonably should have known that a conflict existed between what the children wanted and what their attorney advocated.

## CHILD'S INTEREST

## CHILD'S STATEMENT

## CHILD'S TESTIMONY

***SEE ALSO* "VIDEOTAPED TESTIMONY"**

## CHILDREN'S RIGHT TO REMAIN SILENT

## CIRCUMSTANTIAL EVIDENCE

## CIVIL RIGHTS -- § 1983

## CLAIMS COMMISSIONER

## CLEAR AND CONVINCING EVIDENCE

***SEE* "STANDARD OF PROOF"**

## COLLATERAL CONSEQUENCES

### ***In re Claudia F.*, 93 Conn. App. 343, cert. denied, 277 Conn. 924 (2006)**

Respondent mother appealed the trial court's decision to adjudicate three of her children neglected and commit them to the care, custody, and guardianship of DCF. After filing her

appeal, the mother consented to the termination of her parental rights. In dismissing the mother's appeal from the neglect proceedings, the court found that the appeal was moot because the mother voluntarily terminated her parental rights. An actual controversy no longer existed, and there was no practical relief that could be granted. Further, the case did not fall within the collateral consequences exception to the mootness doctrine. Due to the unappealed OTC and subsequent voluntary TPR, DCF is on notice that there are concerns with mother's parenting ability. Thus, the mother had failed to show how the finding of neglect in the neglect proceeding would produce collateral consequences beyond the consequences that could flow from the unappealed order of temporary custody. The appeal was dismissed.

### COLLATERAL ESTOPPEL

*SEE "RES JUDICATA"*

### COMMITMENT

### COMPETENCY

### COMPETENCY OF WITNESS

*SEE "WITNESS"*

### COMPLAINT/PETITION

### CONDUCT OF DCF

### CONFESSION

### CONFIDENTIALITY

*SEE ALSO "PSYCHIATRIC AND PSYCHOLOGICAL PRIVILEGE"*

### CONFRONTATION

*SEE "SIXTH AMENDMENT"*

### CONSENT

## CONSENT DECREE

## CONSTANCY OF ACCUSATION

## CONSTITUTIONAL LAW

## CONTINUANCE

### ***In re Stacy G.*, 94 Conn. App. 348 (2006)**

Father appealed the trial court's denial of his motion for a continuance in a hearing to reinstate his guardianship. Appellate Court found that trial court abused its discretion in admitting into evidence three reports to court ordered psychological evaluations of the father. The reports were inadmissible hearsay; the father did not have the ability to cross examine the alleged victims on their reports. The fact that evaluations improperly found their way into court file does not itself make them admissible or subject to judicial notice.

The Appellate Court also found the trial court improperly denied father's motion for a continuance so he could present testimony from the forensic evaluator he recently engaged. In the unique circumstances of this case, in denying the continuance, the court predetermined its view on the evidence the father sought to obtain and present.

## CONVICTION

## COTERMINOUS PETITION

### ***In re Nelmarie O.*, 97 Conn. App. 624 (2006)**

Respondent mother appeals the judgment of TPR regarding Nelmarie and her sister. After a lengthy trial, the court found that the girls had seen their parents abuse their half-brother and that respondent mother had ordered them to hit the child with a sandal. Their half brother died from injuries he sustained while in the mother's care. There was no evidence of physical abuse towards the girls. However, the court found that the parents had failed to provide them with a safe home free of violence and granted the co-terminous petitions.

Respondent mother alleged on appeal that the court improperly: (1) considered evidence gathered after the filing of the petitions for termination of parental rights, and (2) found that she failed to provide for the emotional well-being of her two minor daughters. The Appellate

Court disagreed. First, Prac. Book sec. 35a-7(a) refers to the events preceding the filing of the petition, not the evidence preceding the filing of the petition. Thus it is not required that the evidence of the events be gathered before the filing of the petition. In this case, all of the events preceded the filing of the petitions because the daughters were removed from the custody of the mother and father on September 24, 2003, and the petitions were filed two days later. Second, the appeals court concluded that the trial court did not err in finding that the mother failed to provide for the emotional well-being of both daughters by abusing the father's son in their presence and ordering them to participate in the abuse. The statute does not require that the subjects of the TPR petition be physically abused. Emotional abuse is sufficient to prevail on ground (c) – commission or omission. The fact that she was not the boy's legal guardian is not relevant to respondent mother's claim. The judgment was affirmed.

***In re Rachel J.*, 97 Conn. App. 748 (2006)**

Mother appealed the termination of her parental rights based upon DCF's coterminous petitions. She claimed that the trial court improperly concluded that one child sustained a serious bodily injury under Conn. Gen. Stat. § 17a-112(j)(3)(F) and erroneously found that it was in the child's best interest to terminate her parental rights. The trial court judgment was affirmed.

On appeal, mother challenges whether child sustained a "serious physical injury." Appellate Court notes that the term is not defined in our child welfare statutes and declines to apply criminal definitions. The court looks to the dictionary definition of serious meaning "to cause considerable distress, anxiety or inconvenience." In assaulting the child, the mother caused a serious injury that resulted in a severe fracture of the child's elbow. The seriousness was manifested by the mother's tactical decision to delay medical treatment in order to avoid DCF intervention.

Appellate Court also found termination of parental rights in child's best interest as child had strong negative feelings about the mother. Child was also exposed to physical, sexual and emotional abuse and best interest served by terminating mother's parental rights.

***In re Christina M.*, 280 Conn. 474 (2006)**

Termination petition granted on failure to rehabilitate grounds. Parents appeal, calling ineffective assistance of counsel for their children. Supreme Court held that parents have standing to challenge the adequacy of their children's reparation because the rights of the parents are inextricably intertwined with those of their children. Parents, however, could not

prevail on their claim that the trial court erred in failing *sua sponte* to appoint a guardian ad litem to advocate the children's wishes. There was insufficient evidence to support that the trial court knew or reasonably should have known that a conflict existed between what the children wanted and what their attorney advocated.

***In re Christian M.*, 2006 Conn. Super. LEXIS 293, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Jan. 30, 2006, Taylor, J.)**

Neglect petitions were filed concerning the respondent mother and her three children. A coterminous petition regarding the respondent father to Annette G. was filed alleging acts of omission/commission. Annette G. suffered multiple fractures to her legs, arms, ribs and skull as a result of abuse. After the neglect petition was filed, Mignette O. disclosed that Annette G's father sexually abused her starting at the age of six, which included anal penetration. The respondent mother did not believe that either Annette's father physically abused her or that he sexually abused Mignette.

The trial court, citing *In re Michael D.*, 58 Conn. App. 119, 752 A.2d 1135, *cert. denied*, 254 Conn. 911, 759 A.2d 505 (2000), noted that "our statutes clearly permit an adjudication of neglect based on a potential for harm or abuse to occur in the future." Juvenile courts do not have to wait until the harm occurs before acting, and thus, the court found that Christian and Mignette were neglected even though they were not physically harmed in the same manner as Annette.

The trial court also found by clear and convincing evidence that DCF proved the ground of acts of omission and commission. Annette's serious physical injuries were non-accidental and/or inadequately explained. The father's explanation was deficient as to how the child acquired the physical injuries. The father admitted to causing these injuries by using excessive force while changing the child's diaper. The court found that the father fabricated aspects of his story to exculpate himself, but the totality of the evidence indicated that he was responsible for the injuries.

The court terminated the parental rights of Annette's father, having found that it was in her best interest. The father was offered reunification services, e.g., substance abuse and anger management, which he failed to accept. Additionally, he failed to complete many of the provisions in the court ordered specific steps. Based on the totality of the circumstances, the court found that the father had not made realistic and sustained efforts to conform his conduct

and minimally accept responsibility for his actions.

With regard to the neglect petitions, the court committed the children to the care and custody of DCF. The mother refused to accept that Annette's father has any culpability for either Annette or Mignette's injuries. The mother refused to accept reunification services unless Annette's father could also participate. The court ordered evaluator opined that she questioned mother's ability to provide for the children's emotional needs and the long-term effects it would have on them, and therefore, could not recommend immediate reunification.

***In re Shakyra C., 2006 Conn. Super. LEXIS 1844, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 15, 2006, Taylor, J.)***

The father did not appear at trial. Father failed to maintain contact with the child, the foster parent or DCF. TPR granted on basis of abandonment. Mother has a long history of substance abuse, resulting in the TPR of two of her other children. Although mother participated in various programs offered to her by DCF, she refused to commit to appropriate substance abuse treatment and counseling on a long-term basis. Mother refused to access DMR services, left a sober house, went into the community, and resided with a recovering drug addict. TPR granted based on failure to rehabilitate (Ground E).

***In re Kaisson C., 2006 Conn. Super. LEXIS 2281, Superior Court for Juvenile Matters, Child Protection Session at Middletown (July 26, 2006, Bear, J.)***

Mother consented to the petition. Father failed to appear at trial. Based on the evidence presented to the court, it found that the child was neglected and that the respondent father abandoned the child in that he failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child. In addition, the trial court found that there was no parent child relationship between the two. As such, TPR was in the child's best interest.

**COURT-ORDERED EVALUATION**

***In re Stacy G., 94 Conn. App. 348 (2006)***

Father appealed the trial court's denial of his motion for a continuance in a hearing to reinstate his guardianship. Appellate Court found that trial court abused its discretion in admitting into evidence three reports to court ordered psychological evaluations of the father. The reports were inadmissible hearsay; the father did not have the ability to cross examine the alleged victims on their reports. The fact that evaluations improperly found their way into court file does not itself make them admissible or subject to judicial notice.

The appellate court also found the trial court improperly denied father's motion for a continuance so he could present testimony from the forensic evaluator he recently engaged. In the unique circumstances of this case, in denying the continuance, the court predetermined its view on the evidence the father sought to obtain and present.

**SEE ALSO "PSYCHOLOGICAL EVALUATION"**

**"PSYCHIATRIC AND PSYCHOLOGICAL PRIVILEGE"**

## **COURTROOM DEMEANOR**

### **CREDIBILITY**

***Doe v. Carreiro, 94 Conn. App. 626, cert. denied, 278 Conn. 914 (2006)***

Rules of evidence do not permit any witness, lay or expert, to testify regarding another witness' credibility.

### **CRIMINAL LAW**

### **CROSS EXAMINED**

### **CROSS-EXAMINATION**

***State v. Gregory C., 94 Conn. App. 759 (2006)***

The appellate court held that the trial court improperly precluded cross examination of the couple's sexual "role-playing" as the evidence of the victim's and the defendant's past sexual role-playing was relevant to the issue of whether defendant used force while having sex with the victim. Thus, defendant's constitutional right to confrontation was violated. The State did not demonstrate that the exclusion was harmless as the proffered testimony was not merely cumulative given that there was no other evidence as to whether the victim engaged in sexual role-playing with defendant on prior occasions.

***State v. Irizarry, 95 Conn. App. 224, cert. denied, 279 Conn. 902 (2006)***

The trial court did not violate the defendant's constitutional right to cross-examination and to confront a witness by restricting the cross-examination with regard to the witness's alleged theft

of the defendant's social security check. The defendant sought to cross-examine the witness to show bias or interest in testifying falsely. The Appellate Court concluded that the defendant failed to establish the relevance of the testimony through a proper foundation. The only indication of the alleged theft was a police report that contained double hearsay from non-testifying individuals.

The defendant's inquiry into the witness's alleged theft of the defendant's social security check was "based on wholly speculative information lacking the necessary indicia of reliability." In disallowing the proposed cross-examination to show bias or interest in testifying falsely, a court does not abuse its discretion where the defendant "attempted to use cross-examination as a tool to investigate purely speculative sources of witness bias, rather than as a tool to discredit testimony on the basis of a preexisting good faith belief that bias existed. It is entirely proper for a court to deny a request to present certain testimony that will further nothing more than a fishing expedition ... or result in a wild goose chase."

***In re Isabella C., 2006 Conn. Super. LEXIS 641, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Mar. 29, 2006, Jongbloed, J.)***

Petition to terminate parental rights as to mother and father. Father was previously defaulted in regional court for failing to appear regarding termination petition. Father appeared at court for trial, but he did not move to open the default. The court permitted father to participate for dispositional purposes only. Mother had ongoing substance abuse issues and criminal activity. Mother failed to complete several treatment and training programs and did not maintain steady employment or housing. According to the court evaluator, the children had no particular relationship with mother. Parental rights were terminated as to both parents.

***In re Logan S., 2006 Conn. Super. LEXIS 1241, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 27, 2006, Jongbloed, J.)***

Father sought review of judgment by Probate court terminating his rights. Trial de novo held. Father was incarcerated most of his life, had no involvement with son before or after incarceration. TPR granted based on no ongoing parent child relationship and abandonment.

**CULTURAL AND LANGUAGE ISSUES**

## CUSTODY DISPUTE

### ***In re Anthony E., 96 Conn. App. 414, cert. denied, 280 Conn. 914 (2006)***

The children were adjudicated uncared for while in mother's care and placed in the primary custody of their father. Parents remained joint guardians. Subsequently, mother filed a motion for a modification of the order and sought physical custody of the children. The trial court found that there was a material change in the mother's circumstances and gave the parties shared physical custody. The Appellate Court held the trial court's findings of a material change in the mother's circumstances was supported by the evidence: she had adequate living conditions, was compliant with her mental health program, had her substance abuse issues under control, was employed, and had adequate income and child care arrangements. However, the trial court abused its discretion by modifying the custody order without making a finding that doing so was in the children's best interests. The order of the trial court was reversed. The case was remanded with direction to deny the mother's motion to modify the court's order as to custody of the children.

## DECLARATORY JUDGMENT

### DEFAULT

### ***In re Isabella C., 2006 Conn. Super. LEXIS 641, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Mar. 29, 2006, Jongbloed, J.)***

Petition to terminate parental rights as to mother and father. Father was previously defaulted in regional court for failing to appear regarding termination petition. Father appeared at court for trial, but he did not move to open the default. The court permitted father to participate for dispositional purposes only. Mother had ongoing substance abuse issues and criminal activity. Mother failed to complete several treatment and training programs and did not maintain steady employment or housing. According to the court evaluator, the children had no particular relationship with mother. Parental rights were terminated as to both parents.

## DELINQUENCY

### ***In re William D., 97 Conn. App. 600, cert. granted, 280 Conn. 943 (2006)***

When he was 15 years old, respondent was adjudicated as delinquent and committed to DCF for a period not to exceed 18 months. When respondent was 16 years old, DCF moved for an extension of his commitment pursuant to § 46b-141(b). The trial court extended his

commitment for an indeterminate period, not to extend beyond the date when he would become 18. Appellate Court affirmed the extension. Certification granted on the issue whether the Appellate Court properly concluded that the term "child" as used in Conn. Gen. Stat. § 46b-141(b) did not have meaning defined under Conn. Gen. Stat. § 46b-120(1) but rather referred to a person who was previously committed as a delinquent under the provisions of Conn. Gen. Stat. § 46b-141(a).

## DEMEANOR

*SEE "COURTROOM DEMEANOR"*

## DEPARTMENT OF CORRECTIONS RECORDS

## DEPARTMENT OF MENTAL RETARDATION

### ***Christopher R. v. Commissioner of Mental Retardation, 277 Conn. 594 (2006)***

State agency, DMR, did not exceed its statutory authority when considering all available tests in determining whether plaintiff was eligible for services. The decision to deny eligibility was supported by substantial evidence in the record.

## DEPOSITIONS

## DISCOVERY

## DISPOSITION

### ***In re Anthony E., 96 Conn. App. 414, cert. denied, 280 Conn. 914 (2006)***

The children were adjudicated uncared for while in mother's care and placed in the primary custody of their father. Parents remained joint guardians. Subsequently, mother filed a motion for a modification of the order and sought physical custody of the children. The trial court found that there was a material change in the mother's circumstances and gave the parties shared physical custody. The Appellate Court held the trial court's findings of a material change in the mother's circumstances was supported by the evidence: she had adequate living conditions, was compliant with her mental health program, had her substance abuse issues under control, was employed, and had adequate income and child care arrangements. However, the trial court abused its discretion by modifying the custody order without making a finding that doing so was in the children's best interests. The order of the trial court was reversed. The case was

remanded with direction to deny the mother's motion to modify the court's order as to custody of the children.

DOMESTIC VIOLENCE

DRUG AND ALCOHOL

DUE PROCESS

***In re Nasia B.*, 98 Conn. App. 319 (2006)**

No party filed a written motion to revoke the child's commitment. The purpose of requiring such a writing provides for orderly administration and fulfillment of requirements of due process. When a trial court *sua sponte* revokes a commitment, it steps outside the statutory authority of 46b-129(m) and (o), which protect the due process rights of DCF, the parents, foster parents, and best interest of the child.

DUTY OWED

ECONOMIC HARDSHIP

EDUCATION

EFFECTIVE ASSISTANCE OF COUNSEL

ELEVENTH AMENDMENT

EMANCIPATION

EMOTIONAL DISTRESS

EQUAL PROTECTION

ESTOPPEL

EVIDENCE

***Doe v. Carreiro*, 94 Conn. App. 626, cert. denied, 278 Conn. 914 (2006)**

Appellate Court will not reverse a trial court's decision on the basis of an evidentiary ruling

whether the objection was not clearly made before the trial court. An error in admission of evidence does not require reversal of the resulting judgment if the improperly admitted evidence is merely cumulative in nature.

### EX PARTE CONTACT

### EXCITED UTTERANCE

#### ***State v. Gregory C., 94 Conn. App. 759 (2006)***

The victim made statements to the officer about her resistance when defendant initially tried to have sex with her. The officer testified at trial to victim's statements as an excited utterance under that exception to the hearsay rule. The appellate court found that, under the totality of the circumstances, the victim's statements to the officer were not spontaneous but were made with ample time for reasoned reflection. More than fifteen hours had passed between the time of the alleged sexual assault and the victim's statement to the officer. She therefore had considerable time and opportunity to collect her thoughts and reflect on what had occurred the night before.

### EXHIBITS

### EXPECTATIONS

*SEE "SPECIFIC STEPS"*

### EXPERT

#### ***Doe v. Carreiro, 94 Conn. App. 626, cert. denied, 278 Conn. 914 (2006)***

Rules of evidence do not permit any witness, lay or expert, to testify regarding another witness' credibility.

#### ***In re Stacy G., 94 Conn. App. 348 (2006)***

Father appealed the trial court's denial of his motion for a continuance in a hearing to reinstate his guardianship. Appellate Court found that trial court abused its discretion in admitting into evidence three reports to court ordered psychological evaluations of the father. The reports were inadmissible hearsay, the father did not have the ability to cross examine the alleged victims on their reports. The fact that evaluations improperly found their way into court file

does not itself make them admissible or subject to judicial notice.

The appellate court also found the trial court improperly denied father's motion for a continuance so he could present testimony from the forensic evaluator he recently engaged. In the unique circumstances of this case, in denying the continuance, the court predetermined its view on the evidence the father sought to obtain and present.

**SEE ALSO "COURT-ORDERED EVALUATION"**

**EXTENSION OF COMMITMENT**

***In re William D., 97 Conn. App. 600, cert. granted, 280 Conn. 943 (2006)***

When he was 15 years old, respondent was adjudicated as delinquent and committed to DCF for a period not to exceed 18 months. When respondent was 16 years old, DCF moved for an extension of his commitment pursuant to § 46b-141(b). The trial court extended his commitment for an indeterminate period, not to extend beyond the date when he would become 18. Appellate Court affirmed the extension. Certification granted on the issue whether the Appellate Court properly concluded that the term "child" as used in Conn. Gen. Stat. § 46b-141(b) did not have meaning defined under Conn. Gen. Stat. § 46b-120(1) but rather referred to a person who was previously committed as a delinquent under the provisions of Conn. Gen. Stat. § 46b-141(a).

**FAILURE TO ACKNOWLEDGE**

**FAILURE TO REHABILITATE**

***In re Shaun B., 97 Conn. App. 203 (2006)***

The Appellate Court held that DCF presented clear and convincing evidence that mother failed to rehabilitate herself and that the trial court's determination that termination of the mother's parental rights was in the best interest of the child was not clearly erroneous, as mother's rehabilitation was not foreseeable within a reasonable time.

***In re Brittany J., 100 Conn.App. 329 (2007)***

Petition to terminate parental rights of mother to four children, biological father of three of the children, and two putative fathers of the remaining child. Putative fathers did not appear at trial. The court found none of the parents were able/willing to benefit from reasonable

reunification efforts. Mother admitted to noncompliance with psychotropic medications, was terminated from anger management and tested positive for marijuana. One father was presently using marijuana 2-4 times a week. The putative fathers showed no parental concern of interest. The children had been in care for 3 years.

The mother claims that the trial court improperly found that she failed to rehabilitate herself. The appellate court disagreed, noting the trial court's finding that the mother utterly refused to comply with the medication regimen and continued to have outbursts and problem behavior. The appellate court affirmed TPR was in the children's best interest.

***In re Anthony J., 2006 Conn. Super. LEXIS 312, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Feb. 1, 2006, Jongbloed, J.)***

Petition to terminate parental rights, alleging failure to rehabilitate as to both parents, and abandonment as to father. Father remained incarcerated for a significant period of time and was unavailable to the child. Father had not seen the child since he was five months old. Mother was unable to maintain housing or employment and had ongoing substance abuse issues. The child had been in care, in the same foster home, since he was three days old. Termination was in child's best interest.

***In re Doe, 2006 Conn. Super. LEXIS 634, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Feb. 28, 2006, Baldwin, J.)***

Petition denied as to mother, as the court held she had achieved rehabilitation. The court held mother made significant progress towards rehabilitation and had undergone substance abuse and mental health treatment. Mother also underwent surgery for a thyroid condition which may have contributed to her mental condition. Nothing in the record indicates that DCF offered assistance with thyroid treatment; however, mother had also refused to sign medical releases. The court found a significant bond between mother and child. Thus, court held Petitioner did not prove that mother would not be able to assume a responsible position in the child's life within a reasonable amount of time.

***In re Amanda R., 2006 Conn. Super. LEXIS 688, Superior Court for Juvenile Matters, Child Protection Session at Middletown (March 6, 2006, Crawford, J.)***

Petition to terminate parental rights based on failure to rehabilitate denied as to both parents. Court found that the evidence supported the conclusion that mother achieved a sufficient degree of rehabilitation in that she complete a substance abuse program and had not used heroin in

over one year at the time of trial. Mother was involved in Narcotics Anonymous and waiting to start parenting classes. Father also participated in a substance abuse program. Parents were unmarried but remained in a long term relationship. The children saw father as psychological parent. Petition denied and permanency plan for TPR and adoption not approved.

***In re Isabella C., 2006 Conn. Super. LEXIS 641, Superior Court for Juvenile Matters, Child Protection Session at Middletown (March 8, 2006, Jongbloed, J.)***

Petition to terminate parental rights as to mother and father. Father was previously defaulted in regional court for failing to appear regarding termination petition. Father appeared at court for trial, but he did not move to open the default. The court permitted father to participate for dispositional purposes only. Mother had ongoing substance abuse issues and criminal activity. Mother failed to complete several treatment and training programs and did not maintain steady employment or housing. According to the court evaluator, the children had no particular relationship with mother. Parental rights were terminated as to both parents.

***In re Navelys M., 2006 Conn. Super. LEXIS 1310 (March 21, 2006 Taylor, J.)***

Petition to terminate parental rights. Father failed to visit the child since March 2005 and had serious psychological problems, which remained unaddressed and compromised his ability to be a safe, responsible parent. Mother attended some parenting classes but failed to gain any benefit and stopped visiting the child after successfully completing three parenting courses. DCF made reasonable efforts to locate parents and reunify them. TPR in child's best interest.

***In re Tejiah J., 2006 Conn. Super. LEXIS 946, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Mar. 28, 2006, Crawford, J.)***

Petition to terminate parental rights of both parents. Children had been in foster care for majority of their lives. Although mother and father complied with some steps (releases, keep whereabouts known), neither demonstrated an ability to care for the children now or in the foreseeable future. Mother had persistent mental health issues and substance abuse history. She failed to demonstrate an ability to implement skills/techniques from treatment. Mother also had repeated criminal arrests/involvement for domestic disturbances/breach of peace up through the trial. Father had essentially been uninvolved with the children until long after DCF became involved. He attended family therapy, but related to his new wife and stepchildren, not regarding his own children. Father did not have a plan to care for the children, and continued to exhibit instability with housing and employment. Children were bonded to pre-adoptive foster parents. TPR in children's best interest.

***In re Ryan P.*, 2006 Conn. Super. LEXIS 969, Superior Court for Juvenile Matters, Child Protection Session at Middletown (March 29, 2006, Taylor, J.)**

Petition to terminate father's parental rights. Mother's rights previously terminated. Father had not been available to take part in son's life due to ongoing substance abuse, criminal involvement and domestic violence. At time of trial father was on probation for possession of narcotics and robbery on the 3<sup>rd</sup> degree. Father did not fully participate in services and at the time of trial his economic and living circumstances remained unknown. The child viewed foster parents and foster siblings as his family. TPR in child's best interest.

***In re Jyronne D.*, 2006 Conn. Super. LEXIS 1084, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 12, 2006, Bear, J.)**

Petition to terminate parental rights of mother and father for failure to rehabilitate. Court found mother failed to complete substance abuse treatment and continued to struggle with mental health issues, including severe depression and emotional instability. Father had completed anger management and attended individual counseling but continued to struggle with appropriate parenting techniques. Each parent had more than sufficient time to demonstrate personal rehabilitation and TPR was in best interests of children.

***In re Trinity R.*, 2006 Conn. Super. LEXIS 1098, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 7, 2006, Jongbloed, J.)**

Petition to terminate parental rights of mother and father for failure to rehabilitate. Child had been in care since age one. Mother underwent inpatient treatment for chronic and severe cocaine abuse, but continued to struggle with sobriety. Father was not involved in child's life in any significant way and did not make meaningful efforts to do so until after the petition was filed. Both parents demonstrated poor understanding of substance abuse problems or the child's needs. Mother also continued to struggle with mental health issues. TPR in child's best interest.

***In re Justin T.*, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 12, 2006, Taylor, J.)**

TPR petition brought against the respondent father alleging failure to rehabilitate, no ongoing parent child relationship and abandonment. The respondent mother previously consented to the TPR. DCF proved its grounds by clear and convincing evidence. Father failed to maintain any reasonable degree of interest with his son. During the time that the child was in DCF's care, the father failed to inquire and follow up with the child's well being, and did not send gifts, cards or

letters. Father continued with substance abuse, criminal activity, mental health and parenting deficiencies. Father failed to complete the provisions of the specific steps and participate in referrals made by DCF to address these problems. Child has no present or positive memories of his father. Child's therapist indicated that the father does not exist in the child's world. TPR is in the best interest of the child.

***In re Shalahah J., 2006 Conn. Super. LEXIS 1138, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 21, 2006, Crawford, J.)***

DCF sought termination of parental rights. Mother consented, but "conditional" as to termination of father's rights. Court denied termination as to father and returned case to regional court as to issue of mothers consent and disposition of the case. Due to the conditional consent, the court held that DCF did not prove her consent by clear and convincing evidence. As to father, a prior court had previously determined that reasonable efforts were no longer appropriate, however, the court found that DCF failed to establish that reasonable efforts to reunify with father were made, failed to show father was unable or unwilling, and noted that the prior court finding came sixteen months after the petition was filed. Court found there was considerable dispute as to the number of visits father was offered, the number he attended, and the reasons for missed visits. Court also noted contradictory evidence regarding housing, the relationship between the father and child, and the father's criminal history. Thus, aside from the issue with reasonable efforts, the court determined DCF did not prove failure to rehabilitate as to father.

***In re John N., 2006 Conn. Super. LEXIS 1485, Superior Court for Juvenile Matters, Child Protection Session at Middletown (May 19, 2006, Bear, J.)***

TPR petition filed alleging failure to rehabilitate by the respondent mother. The respondent father previously consented to the TPR. The mother did not appear for the TPR trial. Trial court found by clear and convincing evidence in favor of DCF. The mother suffers from severe mental health problems that remained unaddressed. Mother was unwilling to attend individual counseling or acknowledge her chronic mental health issues and need for long-term treatment. Mother lived a transient lifestyle, moving from shelters to living on the streets in a tent and with various friends. Although mother attended visits consistently and there appeared to be a strong bond with the child, TPR was in the child's best interest. Child was also bonded with his pre-adoptive foster parents and had specialized needs.

***In re Jacob A., 2006 Conn. Super. LEXIS 1725, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 6, 2006, Crawford, J.)***

TPR petition filed alleging failure to rehabilitate by the respondent mother and father. Mother was previously defaulted and her parental rights were terminated at a default trial. Trial court denied the TPR petition as to the father. Father had been sober for over fifteen months; has no chronic mental health problems; and maintained employment and housing. Court found that father is able and willing to benefit from reunification efforts. Father made significant progress and achieved a reasonable degree of reunification that he could assume a responsible position in the children's lives in the foreseeable future. TPR is not in the best interest of the children. They are happy to see their father and sad when the visits end and maintain that they want to return to him.

***In re Janet C., 2006 Conn. Super. LEXIS 1890, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 15, 2006, Bear, J.)***

TPR petitions filed alleging failure to rehabilitate by the respondent parents and abandonment and no ongoing parent child relationship as to the respondent father. Trial court found in favor of DCF. Mother failed to gain insight into child sexual abuse and learn techniques to acquire skills necessary to protect her children. Children showed no bond with the mother during visits and would become upset at mother's attempts to engage with them. Children would display negative behaviors following visits that would continue for days. Father continued to struggle with controlling his anger and antisocial behavior. Father's psychological profile is compounded by his drinking and substance abuse, which makes him a danger to children. Father's attendance at programs was minimal and sporadic. Father did not call DCF to inquire about his children's well-being. Children were bonded to their foster parents and look to them for support. TPR is in their best interest.

***In re Jamal B., 2006 Conn. Super. LEXIS 1896, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 15, 2006, Taylor, J.)***

TPR petitions brought alleging failure to rehabilitate by the respondent mother. The father, John Doe, was previously defaulted for failure to appear. Trial court found in favor of DCF. Mother participated in numerous substance abuse treatment programs referred by DCF, some with success. Mother had short period of sobriety but always returned to abusing drugs. Mother continued to abuse cocaine almost to the eve of trial. Mother failed to address her mental health problems by not attending individual therapy. Mother showed little insight into the effect of her substance abuse and mental health on the child's well being. TPR is in the child's best interest.

***In re Clayton M.*, 2006 Conn. Super. LEXIS 1876, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 20, 2006, Jongbloed, J.)**

TPR petition filed alleging failure to rehabilitate by the respondent parents and the additional ground of no ongoing parent child relationship for the mother. Respondent father was defaulted for failure to appear. Trial court found in favor of DCF. DCF made substantial efforts to assist mother in reunifying with her children. Mother was unable or unwilling to benefit from reunification services. Mother has a significant history of mental health problems and substance abuse. Mother complied with some of the provisions in the specific steps, but failed to participate meaningfully in substance abuse treatment programs and engage in individual counseling. Mother also failed to maintain appropriate housing. Mother remained dependent on her boyfriend, who was described by the court evaluator as having high likelihood of alcohol relapse. Children refer to their mother as "visitor mommy." The memories that the children have of their mother stem from visitation. Both children expressed to the court in letters that they wished to be adopted by their foster parents. TPR was in the best interest of the children.

***In re Joshua N.*, 2006 Conn. Super. LEXIS 1891, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 21, 2006, Bear, J.)**

The trial court found that due to the respondent father's incarceration, no parent child relationship developed between him and the child. During visits, the child did not recognize the respondent father. The respondent father also failed to rehabilitate despite the numerous programs he participated in. Respondent father is capable of reform, but his history suggests many years of impulsive acts and poor judgment exacerbated by substance abuse. The trial court found that the respondent mother abandoned the child and that there was no parent child relationship between the two. The mother missed over fifty percent of her scheduled visits with the child. On the occasions when the visit did take place, a majority of the time, the visits either ended early or the mother arrived late. In addition, the respondent mother failed to rehabilitate – continued to abuse substances; unaddressed mental health problems; domestic violence and irresponsibility with several pregnancies since the child's placement with DCF.

***In re Turquoise L.*, 2006 Conn. Super. LEXIS 2216, Superior Court for Juvenile Matters, Child Protection Session at Middletown (July 21, 2006, Jongbloed, J.)**

The trial court found by clear and convincing evidence that the respondent mother failed to rehabilitate. The respondent mother failed to comply with many of the provisions of the specific steps to address her substance abuse and mental health problems. Specifically, the court emphasized the respondent mother's failure to follow through with the court appointed

evaluator's recommendations to address her borderline personality disorder. By not addressing her diagnosis, the respondent mother has "serious emotional characteristics that impair both her ability to develop appropriate relationships and to discharge child care responsibilities in a consistent and timely manner." Furthermore, the respondent mother would need at least 1½ years of therapy and treatment before she could assume a responsible role in the child's life. At the time of trial, the respondent mother had not begun any meaningful treatment.

***In re Stacy F., 2006 Conn. Super. LEXIS 2589, Superior Court for Juvenile Matters, Child Protection Session at Middletown (August 14, 2006, Bear, J.)***

The court granted the TPR on the grounds that the parents failed to rehabilitate and that there was no ongoing parent child relationship. The mother continued her active alcoholism and out of control behavior. The respondent parents had a significant history of domestic violence. At one point the parents divorced, but later reunited and remarried one another. The father completed most of his expectations in his specific steps, but his continual relationship with the mother prevented him from being able to parent the child.

The court also found neither parent was able to maintain a parent-child relationship with the child but, rather, continued to estrange themselves from her with their unwillingness to listen to the child's needs and accept responsibility for the effects that their negative behaviors had on their child.

The child was approximately 14 ½ years old at the time of trial. Despite the opinions from the family therapist and court appointed evaluator that a termination of parental rights at the time of trial was premature and not in the child's best interest, the court nonetheless found that it was in the child's best interest to terminate her parents' rights. The court opined that the totality of the circumstances – parents' lack of any reasonable rehabilitation within a reasonable period of time, the parents' estrangement from their child, the child's need for safety, stability and permanency, and the child's positive history with the maternal grandmother (adoptive resource) – was clear and convincing evidence that TPR was in the child's best interest.

***In re Diamond P., Superior Court for Juvenile Matters, Child Protection Session at Willimantic (August 18, 2006, Foley, J.)***

Parents failed to appear at the termination of parental rights trial. Trial court heard testimony from the current social worker and received into evidence the TPR social study and addendum thereto. The court declined to act on the TPR petition and ordered DCF to file another

addendum to the TPR social study. The court was dissatisfied with the documentary evidence, specifically, that it was “stale and incomplete information.”

***In re Daniel B.*, 2006 Conn. Super. LEXIS 2561, Superior Court for Juvenile Matters, Child Protection Session at Middletown (August 23, 2006, Taylor, J.)**

The trial court found that mother had failed to rehabilitate in that she failed to correct the factors that lead to the initial commitment of her child. Mother remained incapable of providing a safe and nurturing environment for her child with special challenging needs. Mother is in no better of a position to parent the child now than she was when the child was removed from her care. No amount of time given to the respondent mother would allow her to realize and correct her problems, e.g., substance abuse, mental health, criminal activity, inappropriate relationships, parenting deficits and domestic violence, let alone a reasonable period of time. TPR in the child's best interest. The child is “entitled to the benefit of ending, without further delay, the period of uncertainty as to the availability of his biological parents as caretakers.” The child's best interest cannot be served by continuing to maintain any legal relationship with the respondent parents.

***In re Shantye P.*, 2006 Conn. Super. LEXIS 2586, Superior Court for Juvenile Matters, Child Protection Session at Middletown (August 23, 2006, Taylor, J.)**

Neither the respondent mother nor father appeared at the TPR trial. Although the specific steps did not require the father to cooperate with the child's therapy, the trial court, nonetheless, considered whether the father corrected the factors that lead to the child's initial commitment. Father's failure to cooperate with the child's therapy and his failure to appreciate her conditions were telling factors as to the whether he had rehabilitated. Mother completed almost none of the services referred to her by DCF to address her substance abuse, mental health, parenting deficits, domestic violence and transience. Based on the parents' failure to rehabilitate, it would be unreasonable for the children to remain in foster care on the slim hope that the respondent parents might overcome their problems and provide a safe, responsible and nurturing environment for their children.

***In re Desirae R.*, 2006 Conn. Super. LEXIS 2764, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 11, 2006, Bear, J.)**

Because of positive visitation relationship between father and children, DCF did not establish no on going parent child relationship. Abandonment and failure to rehabilitate proven as to father.

***In re Edlinna F.*, 2006 Conn. Super. LEXIS 2761, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 13, 2006, *Bear, J.*)**

Petition brought to terminate the parental rights of the respondent mother and father. Respondent father consented to the TPR petition. Trial court found by clear and convincing evidence that DCF proved by its grounds of failure to rehabilitate and abandonment as to the respondent mother.

Respondent mother failed to appear at trial. Her counsel was present. During the seventeen months that the children were in the care of DCF, the respondent mother was either incarcerated or whereabouts unknown. Respondent mother's criminal activity revolved around possession of drugs and drug paraphernalia. One month prior to the TPR trial, the respondent mother was arrested for possession of drug paraphernalia. The respondent mother failed to appear in court, and at the time of the TPR trial, had an outstanding warrant for her arrest. The respondent mother visited with her children less than six times. She did not call DCF to inquire as to their well being, nor did she send gifts, cards or letters. The children were placed together in the same foster home since their removal from the respondent mother and were bonded to the foster family. Foster family was willing to adopt all three children. TPR was in the children's best interests.

***In re Stephen M.*, 2006 Conn. Super. LEXIS 2799, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 13, 2006, *Crawford, J.*)**

TPR petitions brought alleging the grounds of failure to rehabilitate, acts of omission/commission and no ongoing parent child relationship as to both the respondent mother and father. Prior to the filing of the TPR, there was a finding that reunification efforts were no longer appropriate with the father. The trial court denied the TPR petition finding that DCF failed to show by clear and convincing evidence that it made reasonable efforts to reunify the children with the mother and that she was unable or unwilling to benefit from reunification efforts. The court found that the only efforts that DCF made were visitation.

Parents were in substantial compliance with the specific steps. They self referred to parenting and anger management programs. Trial court found DCF's claim of noncompliance with a substance abuse evaluation and sexual offender treatment without merit for father. DCF documents indicated no concern with substance abuse and urine screens were negative. Father was also deemed inappropriate for sex offender treatment and therefore no referral was made. DCF warned mother of what she needed to do to avoid a TPR. Respondent mother did not

ignore that her child was sexually abused, but rather, believed that it was the neighbor, and not the father, as reported to her by the child.

The trial court found that there was an ongoing parent child relationship between the children and parents. Visitation reports indicated that the parents interacted appropriately with the two girls, kissing them, reading and playing together. The children greeted the parents with hugs and recognized their parents. Visitation between Stephen and the parents were ceased by DCF. Prior to the suspension of visits, Stephen was happy to see both of his parents and interacted positively with them. Foster mother reported that Stephen asks for his parents. Any lack of ongoing parent child relationship with Stephen is a direct result of DCF's actions.

DCF, therapists, and evaluators questioned the child, Stephen. In each interview, the child denied that his father ever touched him in a sexual manner. The only disclosure made was to a police officer, whose account of the incident, the court found to lack in credibility and consistency.

***In re Matthew L., 2006 Conn. Super. LEXIS 3034, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 15, 2006, Jongbloed,J.)***

Consolidated neglect and termination of parental rights petitions. TPR petition alleged failure to rehabilitate by the respondent parents. Trial court found in favor of DCF. Prior to mother giving birth to these two children, she had her parental rights terminated to four of her eight children. Father had one prior TPR. None of the parents other children were in their care.

Court found by a fair preponderance of the evidence that the children were permitted to live under conditions injurious. Both parents have a significant history for substance abuse and physically violent relationships. Children were at risk from the start when they were born into the parents' relationship.

Despite treatment, mother continued to abuse substances. She continued to be under father's control and influence, remaining completely dependent on him financially and emotionally. Mother refused to participate in a domestic violence program. Father was diagnosed as having an anti-social personality disorder. He participated in a domestic violence program, although he did not believe that he needed the services. Father's diagnosis and discharge remained the same. Father was also dishonest with service providers -- not being forthcoming with truthful information about his past and present conduct.

Both children have specialized needs, diagnosed with PTSD and ADHD. Although they have a bond with their parents, the children were significantly distressed by violence that they were exposed to in their parents care. TPR was in the children's best interest.

***In re Anthony H., 2006 Conn. Super. LEXIS 3123, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 28, 2006, Taylor, J.)***

Petition sought to terminate the parental rights of the respondent mother based on failure to rehabilitate. Respondent fathers consented to the TPR petitions. DCF proved by clear and convincing evidence that it provided the mother with services to reunify her with her children. Mother failed to comply with most of the services and the ones she did participate in were not completely in a timely manner. Mother continued to struggle with maintaining stable housing and employment, mental health problems, domestic violence, and appropriate parenting techniques. Mother made some improvement in her child rearing abilities as it pertains to another child but, but this was in a supervised setting. Additionally, the children who were the subject of the TPR had specialized needs and problematic behaviors that the mother was in denial over. TPR was in the best interest of the children.

***In re Carlos G., 2006 Conn. Super. LEXIS 3122, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Oct. 3, 2006, Bear, J.)***

TPR petitions filed alleging failure to rehabilitate, abandonment and no ongoing parent child relationship as to the respondent parents and the additional ground of abandonment as to the two fathers. Trial court found in favor of DCF on the ground of failure to rehabilitate and abandonment as to the respondent parents, no ongoing parent child relationship as to the fathers, and no ongoing parent child relationship as to the mother with the child, Carlos. Trial court denied of no ongoing parent child relationship as to the mother and the children, Luis and Noemi.

The children were in care for almost 3 ½ years. Carlos's father appeared once in Connecticut from Puerto Rico and had a visit with the child. Carlos's father has not maintained contact with DCF to inquire about Carlos, and has never sent gifts, cards or letters to him. Noemi's father maintained sporadic contact with DCF. He visited only twelve times with Noemi in three years.

Mother struggled with substance abuse and mental health. Mother had periods of compliance with treatment and remaining sober, but continually relapsed. Her most recent use was two months before the TPR with heroin. Mother needed an in-patient program but refused to attend

despite DCF's efforts and referrals. At the time of trial, mother was not engaged in mental health or substance abuse treatment.

Carlos was fearful of returning to live with his mother and would rather live in the woods than with her. Noemi sees her mother as a bad person and did not want to be returned to her care. Luis has specialized needs and behavioral problems requiring a therapeutic setting. TPR was in the children's best interest.

### **FAILURE TO REHABILITATE (GROUND E)**

#### ***In re Jordan T., 2006 Conn. Super. LEXIS 1553, Superior Court for Juvenile Matters, Child Protection Session at Middletown (May 23, 2006, Bear, J.)***

TPR petition filed alleging failure to rehabilitate by the respondent mother. Respondent father previously consented to the TPR petition. The maternal grandparents filed a motion to transfer guardianship, which was consolidated with the TPR trial. Mother did not appear for the trial and her whereabouts were unknown. Trial court denied the maternal grandparents' motion to transfer guardianship finding that it was not in the child's best interest. Trial court found in favor of DCF. Mother continued to struggle with her substance abuse, namely heroin, cocaine and alcohol. Mother did not participate in any programs to deal with her chronic substance abuse issues. TPR was in the child's best interest and for him to remain with his pre-adoptive relative foster parents. Child was twenty-three months old and had lived the past eighteen months with the relative foster family.

#### ***In re Shakyra C., 2006 Conn. Super. LEXIS 1844, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 15, 2006, Taylor, J.)***

The father did not appear at trial. Father failed to maintain contact with the child, the foster parent or DCF. TPR granted on basis of abandonment. Mother has a long history of substance abuse, resulting in the TPR of two of her other children. Although mother participated in various programs offered to her by DCF, she refused to commit to appropriate substance abuse treatment and counseling on a long-term basis. Mother refused to access DMR services, left a sober house, went into the community, and resided with a recovering drug addict. TPR granted based on failure to rehabilitate (Ground E).

### **FAILURE TO THRIVE**

#### **FAMILY WITH SERVICE NEEDS (FWSN)**

## FEDERAL HABEAS CORPUS

### FIFTH AMENDMENT

#### FINAL JUDGMENT

##### ***Manifold v. Ragalia*, 94 Conn. App. 103 (2006)**

Plaintiffs, two children and their parents, sued defendants, the Commissioner and employees of DCF, alleging intentional and negligent infliction of emotional distress in relation to neglect petitions that were ultimately withdrawn.

As an initial matter, the appellate court found that the denial was a final judgment for purposes of appeal because the motion asserted the protections of sovereign immunity and qualified immunity under Conn. Gen. Stat. § 4-165 that protect the individuals involved in from liability and suit.

#### FINANCIAL STATUS

#### FOSTER PARENTS

##### ***In re Nasia B.*, 98 Conn. App. 319 (2006)**

No party filed a written motion to revoke the child's commitment. The purpose of requiring such a writing provides for orderly administration and fulfillment of requirements of due process. When a trial court *sua sponte* revokes a commitment, it steps outside the statutory authority of 46b-129(m) and (o), which protect the due process rights of DCF, the parents, foster parents, and best interest of the child.

#### FOURTEENTH AMENDMENT

#### FOURTH AMENDMENT

#### FREEDOM OF INFORMATION

#### FULL FAITH AND CREDIT CLAUSE

## GRANDPARENT INTERVENTION

*SEE "MOTION TO INTERVENE"*

## GUARDIAN

## GUARDIAN AD LITEM

## HABEAS CORPUS

## HAGUE CONVENTION

## HARMLESS ERROR

### ***Doe v. Carreiro, 94 Conn. App. 626, cert. denied, 278 Conn. 914 (2006)***

Appellate Court will not reverse a trial court's decision on the basis of an evidentiary ruling whether the objection was not clearly made before the trial court. An error in admission of evidence does not require reversal of the resulting judgment if the improperly admitted evidence is merely cumulative in nature.

## HEARING IMPAIRED DEFENDANT

## HEARSAY

### ***In re Stacy G., 94 Conn. App. 348 (2006)***

Father appealed the trial court's denial of his motion for a continuance in a hearing to reinstate his guardianship. Appellate Court found that trial court abused its discretion in admitting into evidence three reports to court ordered psychological evaluations of the father. The reports were inadmissible hearsay, the father did not have the ability to cross examine the alleged victims on their reports. The fact that evaluations improperly found their way into court file does not itself make them admissible or subject to judicial notice.

## HOMELESS

*SEE "UNCARED FOR"*

## HOUSING

IMMIGRATION

IMMUNITY

IMPEACHMENT

INCARCERATION OF A PARENT

INCOMPETENT PARENT

INDIAN CHILD WELFARE ACT

INEFFECTIVE ASSISTANCE OF COUNSEL

INFORMALITY

*SEE "EVIDENCE"*

*SEE "JUVENILE COURT PROCEDURE"*

INFORMANT

INJUNCTIVE RELIEF

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

INTERLOCUTORY ORDERS

INTERPRETER

INTERSTATE COMPACT

INTERVENTION

*SEE "MOTION TO INTERVENE"*

INVESTIGATION

JUDGES

## JUDICIAL NOTICE

### ***In re Stacy G.*, 94 Conn. App. 348 (2006)**

Father appealed the trial court's denial of his motion for a continuance in a hearing to reinstate his guardianship. Appellate Court found that trial court abused its discretion in admitting into evidence three reports to court ordered psychological evaluations of the father. The reports were inadmissible hearsay, the father did not have the ability to cross examine the alleged victims on their reports. The fact that evaluations improperly found their way into court file does not itself make them admissible or subject to judicial notice.

## JURISDICTION

*SEE ALSO* "MOTION TO DISMISS"

### ***In re Claudia F.*, 93 Conn. App. 343 (2005), cert. denied, 277 Conn. 924 (2006)**

The respondent mother's petition for certification for appeal from the Appellate Court, *In re Claudia F.*, 93 Conn. App. 343, is denied.

## JUVENILE COURT PROCEDURE

## LAW OF THE CASE

## LEGAL DUTY

*SEE* "DUTY OWED"

## LICENSING

*SEE* "ADMINISTRATIVE APPEALS"

## MANDATED REPORTER

## MARITAL PRIVILEGE

## MEDICAL EXAMINATIONS

## MEDICAL RECORDS

**SEE ALSO "CONFIDENTIALITY"**

### **MEDICAL TREATMENT EXCEPTION TO HEARSAY**

#### ***State v. Stepney*, 94 Conn. App. 72 (2006)**

Defendant cannot transform an evidentiary claim into a constitutional one by alleging that the admission of challenged statements deprived him of constitutional rights to confront and present a defense as *Golding* analysis is lacking.

### **MENTAL ILLNESS**

#### ***In re Brianna C.*, 98 Conn. App. 797 (2006)**

Mother appealed the trial court's decision following a multi-day trial contesting the OTC, where the trial court *sua sponte*, without objection, consolidated the underlying neglect petition with the hearing on the OTC on the last day of trial. The trial court subsumed the OTC in its ruling that concluded the child was not at any time in immediate physical danger and that no grounds for the OTC existed but that the child was neglected and should be committed to DCF. Judgment was affirmed.

The trial court ordered the child remain in the foster care of her paternal aunt, with daily 8 hour unsupervised visits by the mother. Father's visits were to be supervised. The mother had stated to a social worker that she was afraid of the father because he was a paranoid schizophrenic who had not been taking his medication. Trial court determined the child was neglected, under the statute, because the child was denied proper care and was being permitted to live under conditions injurious to her well-being, since the mother was not able to protect the child adequately from the father. The appellate court concluded that the child was neglected within the definition of § 46b-120(9)(C) and that the appellate court could not substitute its view for the discretion of the trial court in choosing whether the interest of the child to have a constant relationship with the mother was in the child's best interest when weighed against the possibility that she would be unable to prevent the child's father from causing injury to the child in the event that he failed to medicate himself appropriately.

### **MENTAL RETARDATION**

### **MINORS**

### **MIRANDA WARNING**

## MISTRIAL

## MOOTNESS

### ***In re Claudia F.*, 93 Conn. App. 343 (2005), cert. denied, 277 Conn. 924 (2006)**

Respondent mother appealed the trial court's decision to adjudicate three of her children neglected and commit them to the care, custody, and guardianship of DCF. After filing her appeal, the mother consented to the termination of her parental rights. In dismissing the mother's appeal from the neglect proceedings, the court found that the appeal was moot because the mother voluntarily terminated her parental rights. An actual controversy no longer existed, and there was no practical relief that could be granted. Further, the case did not fall within the collateral consequences exception to the mootness doctrine. Mother argued that the record of her prior adjudication of neglect would continue to affect any involvement by the department with respect to her newborn child (born after she consented to TPR). However, the appellate court found that a judgment of neglect is not directed at the mother, but goes to the condition of her children. Further the appellate court notes mother had failed to appeal from the trial court's earlier order granting the OTC. The evidence admitted at the neglect proceeding was essential the same as admitted at the OTC hearing. Petitioner offered into evidence the transcripts from the OTC and rested.

## MOTIONS

### MOTION FOR ADVICE

### MOTION TO AMEND PETITION

### MOTION FOR ARTICULATION

### ***Manifold v. Ragalia*, 94 Conn. App. 103 (2006)**

DCF asserted that the plaintiffs were unable to establish a set of facts to support the claim that the DCF's conduct constituted intentional infliction of emotional distress. In its memorandum of decision, however, the court did not address that claim. Instead, it focused only on the defendants' arguments regarding sovereign and statutory immunity. The appellate court referred to Prac. Book sec. 66-5 and noted that "[t]he proper procedure by which an appellant may ask the trial court to provide the factual and legal basis for a ruling, or to address a matter that it has overlooked in its decision, is to file a motion for articulation." (p. 124).

## MOTION TO BIFURCATE

## MOTION FOR CONTEMPT

***In re Leah S.*, 96 Conn. App. 1, cert. granted, 280 Conn. 911 (2006), limited to the following issue: Did the Appellate Court properly affirm the trial court's finding of contempt against the petitioner?**

DCF sought review of the judgment of the trial court, which found it in contempt for willful failure to comply with the court's orders in regard to a child. DCF claimed the trial court improperly held it in contempt because the orders were ambiguous and its finding of contempt was unsupported by the evidence. The judgment of the trial court was affirmed.

The trial court found that despite Leah's "unmistakable and urgent" needs, DCF failed to implement the specific steps ordered by the court in April, May and October, 2003. In particular, DCF did not comply with the order that it take all necessary measures to ensure Leah's safety and well-being because it failed to seek a residential placement for Leah, and to provide Leah with psychiatric care for her serious mental illness and her persistent headaches. The court also found DCF failed to comply with the order requiring it to provide case management services because it failed to offer Leah's parents training to assist them in managing children with mental health issues, and DCF failed "to develop and implement a coordinated, systematic and comprehensive treatment modality" to assist in the reunification of the family. In addition, the trial court found that DCF's failure to provide Leah's parents with training to assist them in addressing the mental health needs of their children constituted a failure to follow the specific step that DCF refer the respondents to the appropriate services. Finally, the court found DCF's failure to take any action to facilitate counseling between Leah and her brother constituted a violation of its October, 2003 order that DCF "facilitate counseling between Leah and [her brother] to resolve sibling difficulties."

DCF's failure to comply with the court's orders constituted indirect contempt because it occurred outside the presence of the court. To constitute contempt, a party's actions must be willful. Whether a good faith dispute or misunderstanding over the terms of an obligation prevents a finding of willfulness is within the trial court's discretion. However, to the extent that a party subject to a court's orders does not fully understand the obligation it is incumbent on that party to seek clarification from the court.

The appellate court held that, the trial court's orders provided ample direction to DCF. However, if in fact, DCF was uncertain as to the trial court's mandates, it was DCF's responsibility to seek clarification and further direction from the court. When the trial court ordered DCF to undertake specific steps, its orders were directives and not mere aspirations due to the case being a difficult one. Further, the record contained ample circumstantial evidence to support the trial court's finding of contempt based on DCF's willful failure to comply with the court's orders.

#### MOTION FOR CONTINUANCE

#### MOTION FOR DIRECTED VERDICT

#### MOTION TO DISMISS

#### ***In re Nasia B.*, 98 Conn. App. 319 (2006)**

Trial court improperly granted respondents' oral motion to dismiss termination petition based on failure to establish a prima facie case. In granting the motion to dismiss, trial court improperly made findings of fact, weighed credibility of evidence, and did not construe it in the light most favorable to the petitioner.

#### MOTION TO DISQUALIFY

#### MOTION TO EXPUNGE AND SEAL

#### MOTION FOR EXTENSION OF TIME

#### MOTION FOR INJUNCTION

#### MOTION TO INTERVENE

#### MOTION FOR MISTRIAL

#### MOTION TO MODIFY DISPOSITION

#### MOTION FOR NEW TRIAL

#### MOTION FOR RECONSIDERATION

#### MOTION FOR RECUSAL

MOTION TO REMOVE DOCUMENTS

MOTION TO REOPEN/OPEN

MOTION TO SET ASIDE VERDICT

MOTION TO STRIKE

MOTION TO TRANSFER GUARDIANSHIP

***In re Jordan T., 2006 Conn. Super. LEXIS 1553, Superior Court for Juvenile Matters, Child Protection Session at Middletown (May 23, 2006, Bear, J.)***

TPR petition filed alleging failure to rehabilitate by the respondent mother. Respondent father previously consented to the TPR petition. The maternal grandparents filed a motion to transfer guardianship, which was consolidated with the TPR trial. Mother did not appear for the trial and her whereabouts were unknown. Trial court denied the maternal grandparents' motion to transfer guardianship finding that it was not in the child's best interest. Trial court found in favor of DCF. Mother continued to struggle with her substance abuse, namely heroin, cocaine and alcohol. Mother did not participate in any programs to deal with her chronic substance abuse issues. TPR was in the child's best interest and for him to remain with his pre-adoptive relative foster parents. Child was twenty-three months old and had lived the past eighteen months with the relative foster family.

MOTION TO VACATE

MULTIETHNIC PLACEMENT ACT

MUNCHAUSEN SYNDROME

NARRATIVES

NEGLECT

***In re Claudia F., 93 Conn. App. 343, cert. denied, 277 Conn. 924 (2006)***

Respondent mother appealed the trial court's decision to adjudicate three of her children neglected and commit them to the care, custody, and guardianship of DCF. After filing her appeal, the mother consented to the termination of her parental rights. In dismissing the

mother's appeal from the neglect proceedings, the court found that the appeal was moot because the mother voluntarily terminated her parental rights. An actual controversy no longer existed, and there was no practical relief that could be granted. Further, the case did not fall within the collateral consequences exception to the mootness doctrine. Mother argued that the record of her prior adjudication of neglect would continue to affect any involvement by the department with respect to her newborn child (born after she consented to the TPR). However, the appellate court found that a judgment of neglect is not directed at the mother, but goes to the condition of her children. Further, the appellate court notes mother had failed to appeal from the trial court's earlier order granting temporary custody to the Commissioner. The evidence admitted at the neglect proceeding was essentially the same as admitted at the OTC hearing. Petitioner offered into evidence the transcripts from the OTC hearing and then rested.

***In re Brianna C.*, 98 Conn. App. 797 (2006)**

Mother appealed the trial court's decision following a multi-day trial contesting the OTC, where the trial court *sua sponte*, without objection, consolidated the underlying neglect petition with the hearing on the OTC on the last day of trial. The trial court subsumed the OTC in its ruling that concluded the child was not at any time in immediate physical danger and that no grounds for the OTC existed but that the child was neglected and should be committed to DCF. Judgment was affirmed.

The trial court ordered that the child remain in the foster care of her paternal aunt, with daily, 8-hour, unsupervised visits by the mother. Father's visits were to be supervised. The mother had stated to a social worker that she was afraid of the father because he was a paranoid schizophrenic who had not been taking his medication. Trial court determined the child was neglected, under the statute, because the child was denied proper care and was being permitted to live under conditions injurious to her well-being, since the mother was not able to protect the child adequately from the father. The appellate court concluded that the child was neglected within the definition of § 46b-120(9)(C) and that the appellate court could not substitute its view for the discretion of the trial court in choosing whether the interest of the child to have a constant relationship with the mother was in the child's best interest when weighed against the possibility that she would be unable to prevent the child's father from causing injury to the child in the event that he failed to medicate himself appropriately.

***In re Aaron B.*, 2006 Conn. Super. LEXIS 2244, Superior Court for Juvenile Matters, Child Protection Session at Middletown (July 21, 2006, *Bear, J.*)**

The trial court found the child to be neglect and ordered that she be committed to the care and custody of the department. Additionally, the trial court ordered that custody and guardianship of the sibling be transferred to the maternal grandmother. Both children had been living with the maternal grandmother for 2 ½ years. The respondent mother and stepfather have been involved with the department since 2002. The respondent mother and stepfather had a personality disorder requiring extensive psychotherapy, but with only a minimal likelihood of participation by the parties. There was a significant history of substance abuse, transience and inappropriate housing that remained unaddressed due to the parties' refusal to accept assistance despite the department's efforts. The stepfather also was cruel, sadistic and violent towards the children.

**NEGLIGENCE**

**NINETY-SIX HOUR HOLD**

**NO ONGOING PARENT-CHILD RELATIONSHIP**

***In re Karisma P.*, 2006 Conn. Super. LEXIS 116, Superior Court for Juvenile Matters, Child Protection Session at Middletown (January 17, 2006, *Taylor, J.*)**

Petition to terminate parental rights of mother and father. Mother consented. Petition as to father alleged failure to rehabilitate and no ongoing parent child relationship. Father had filed a motion to transfer guardianship to paternal grandmother. The child was born prematurely in the hallway of mother's friend's residence and tested positive for marijuana and crack. The child was placed in a medically fragile home, where she remained throughout the trial. A significant bond existed between child and foster family. Father had ongoing criminal involvement and was incarcerated for most of child's life. Father offered no plan how he would/could care for the child, particularly in light of the child's special needs. The court terminated parental rights and held that father did not prove by fair preponderance of the evidence that transfer of guardianship was in child's best interest.

***In re Isabella C.*, 2006 Conn. Super. LEXIS 641, Superior Court for Juvenile Matters, Child Protection Session at Middletown (March 8, 2006, *Jongbloed, J.*)**

Petition to terminate parental rights as to mother and father. Father was previously defaulted in regional court for failing to appear regarding termination petition. Father appeared at court for

trial, but he did not move to open the default. The court permitted father to participate for dispositional purposes only. Mother had ongoing substance abuse issues and criminal activity. Mother failed to complete several treatment and training programs and did not maintain steady employment or housing. According to the court evaluator, the children had no particular relationship with mother. Parental rights were terminated as to both parents.

***In re Trinity R.*, 2006 Conn. Super. LEXIS 1098, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 7, 2006, Jongbloed, J.)**

Petition to terminate parental rights of mother and father for failure to rehabilitate. Child had been in care since age one. Mother underwent inpatient treatment for chronic and severe cocaine abuse, but continued to struggle with sobriety. Father was not involved in child's life in any significant way and did not make meaningful efforts to do so until after the petition was filed. Both parents demonstrated poor understanding of substance abuse problems or the child's needs. Mother also continued to struggle with mental health issues. TPR in child's best interest.

***In re Justin T.*, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 12, 2006, Taylor, J.)**

TPR petition brought against the respondent father alleging failure to rehabilitate, no ongoing parent child relationship and abandonment. The respondent mother previously consented to the TPR. DCF proved its grounds by clear and convincing evidence. Father failed to maintain any reasonable degree of interest with his son. During the time that the child was in DCF's care, the father failed to inquire and follow up with the child's well being, and did not send gifts, cards or letters. Father continued with substance abuse, criminal activity, mental health and parenting deficiencies. Father failed to complete the provisions of the specific steps and participate in referrals made by DCF to address these problems. Child has no present or positive memories of his father. Child's therapist indicated that the father does not exist in the child's world. TPR is in the best interest of the child.

***In re Janet C.*, 2006 Conn. Super. LEXIS 1890, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 15, 2006, Bear, J.)**

TPR petitions filed alleging failure to rehabilitate by the respondent parents and abandonment and no ongoing parent child relationship as to the respondent father. Trial court found in favor of DCF. Mother failed to gain insight into child sexual abuse and learn techniques to acquire skills necessary to protect her children. Children showed no bond with the mother during visits and would become upset at mother's attempts to engage with them. Children would display

negative behaviors following visits that would continue for days. Father continued to struggle with controlling his anger and antisocial behavior. Father's psychological profile is compounded by his drinking and substance abuse, which makes him a danger to children. Father's attendance at programs was minimal and sporadic. Father did not call DCF to inquire about his children's well-being. Children were bonded to their foster parents and look to them for support. TPR is in their best interest.

***In re Clayton M., 2006 Conn. Super. LEXIS 1876, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 20, 2006, Jongbloed, J.)***

TPR petition filed alleging failure to rehabilitate by the respondent parents and the additional ground of no ongoing parent child relationship for the mother. Respondent father was defaulted for failure to appear. Trial court found in favor of DCF. DCF made substantial efforts to assist mother in reunifying with her children. Mother was unable or unwilling to benefit from reunification services. Mother has a significant history of mental health problems and substance abuse. Mother complied with some of the provisions in the specific steps, but failed to participate meaningfully in substance abuse treatment programs and engage in individual counseling. Mother also failed to maintain appropriate housing. Mother remained dependent on her boyfriend, who was described by the court evaluator as having high likelihood of alcohol relapse. Children refer to their mother as "visitor mommy." The memories that the children have of their mother stem from visitation. Both children expressed to the court in letters that they wished to be adopted by their foster parents. TPR was in the best interest of the children.

***In re Joshua N., 2006 Conn. Super. LEXIS 1891, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 21, 2006, Bear, J.)***

The trial court found that due to the respondent father's incarceration, no parent child relationship developed between him and the child. During visits, the child did not recognize the respondent father. The respondent father also failed to rehabilitate despite the numerous programs he participated in. Respondent father is capable of reform, but his history suggests many years of impulsive acts and poor judgment exacerbated by substance abuse. The trial court found that the respondent mother abandoned the child and that there was no parent child relationship between the two. The mother missed over fifty percent of her scheduled visits with the child. On the occasions when the visit did take place, a majority of the time, the visits either ended early or the mother arrived late. In addition, the respondent mother failed to rehabilitate – continued to abuse substances; unaddressed mental health problems; domestic violence and irresponsibility with several pregnancies since the child's placement with DCF.

***In re Kaison C.*, 2006 Conn. Super. LEXIS 2281, Superior Court for Juvenile Matters, Child Protection Session at Middletown (July 26, 2006, Bear, J.)**

Mother consented to the petition. Father failed to appear at trial. Based on the evidence presented to the court, it found that the child was neglected and that the respondent father abandoned the child in that he failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child. In addition, the trial court found that there was no parent child relationship between the two. As such, TPR was in the child's best interest.

***In re Stacy F.*, 2006 Conn. Super. LEXIS 2589, Superior Court for Juvenile Matters, Child Protection Session at Middletown (August 14, 2006, Bear, J.)**

The court granted the TPR on the grounds that the parents failed to rehabilitate and that there was no ongoing parent child relationship. The mother continued her active alcoholism and out of control behavior. The respondent parents had a significant history of domestic violence. At one point the parents divorced, but later reunited and remarried one another. The father completed most of his expectations in his specific steps, but his continual relationship with the mother prevented him from being able to parent the child.

The court also found neither parent was able to maintain a parent-child relationship with the child but, rather, continued to estrange themselves from her with their unwillingness to listen to the child's needs and accept responsibility for the effects that their negative behaviors had on their child.

The child was approximately 14 ½ years old at the time of trial. Despite the opinions from the family therapist and court appointed evaluator that a termination of parental rights at the time of trial was premature and not in the child's best interest, the court nonetheless found that it was in the child's best interest to terminate her parents' rights. The court opined that the totality of the circumstances – parents' lack of any reasonable rehabilitation within a reasonable period of time, the parents' estrangement from their child, the child's need for safety, stability and permanency, and the child's positive history with the maternal grandmother (adoptive resource) – was clear and convincing evidence that TPR was in the child's best interest.

***In re Desirae R.*, 2006 Conn. Super. LEXIS 2764, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 11, 2006, Bear, J.)**

Because of positive visitation relationship between father and children, DCF did not establish no on going parent child relationship. Abandonment and failure to rehabilitate proven as to father.

***In re Stephen M.*, 2006 Conn. Super. LEXIS 2799, Superior Court for Juvenile Matters, Child Protection Session at Middletown (September 13, 2006, Crawford, J.)**

TPR petitions brought alleging the grounds of failure to rehabilitate, acts of omission/commission and no ongoing parent child relationship as to both the respondent mother and father. Prior to the filing of the TPR, there was a finding that reunification efforts were no longer appropriate with the father. The trial court denied the TPR petition finding that DCF failed to show by clear and convincing evidence that it made reasonable efforts to reunify the children with the mother and that she was unable or unwilling to benefit from reunification efforts. The court found that the only efforts that DCF made were visitation.

Parents were in substantial compliance with the specific steps. They self referred to parenting and anger management programs. Trial court found DCF's claim of noncompliance with a substance abuse evaluation and sexual offender treatment without merit for father. DCF documents indicated no concern with substance abuse and urine screens were negative. Father was also deemed inappropriate for sex offender treatment and therefore no referral was made. DCF warned mother of what she needed to do to avoid a TPR. Respondent mother did not ignore that her child was sexually abused, but rather, believed that it was the neighbor, and not the father, as reported to her by the child.

The trial court found that there was an ongoing parent child relationship between the children and parents. Visitation reports indicated that the parents interacted appropriately with the two girls, kissing them, reading and playing together. The children greeted the parents with hugs and recognized their parents. Visitation between Stephen and the parents were ceased by DCF. Prior to the suspension of visits, Stephen was happy to see both of his parents and interacted positively with them. Foster mother reported that Stephen asks for his parents. Any lack of ongoing parent child relationship with Stephen is a direct result of DCF's actions.

DCF, therapists, and evaluators questioned the child, Stephen. In each interview, the child denied that his father ever touched him in a sexual manner. The only disclosure made was to a police officer, whose account of the incident, the court found to lack in credibility and consistency.

***In re Carlos G.*, 2006 Conn. Super. LEXIS 3122, Superior Court for Juvenile Matters, Child Protection Session at Middletown (October 3, 2006, Bear, J.)**

TPR petitions filed alleging failure to rehabilitate, abandonment and no ongoing parent child relationship as to the respondent parents and the additional ground of abandonment as to the two fathers. Trial court found in favor of DCF on the ground of failure to rehabilitate and abandonment as to the respondent parents, no ongoing parent child relationship as to the fathers, and no ongoing parent child relationship as to the mother with the child, Carlos. Trial court denied of no ongoing parent child relationship as to the mother and the children, Luis and Noemi.

The children were in care for almost 3 ½ years. Carlos's father appeared once in Connecticut from Puerto Rico and had a visit with the child. Carlos's father has not maintained contact with DCF to inquire about Carlos, and has never sent gifts, cards or letters to him. Noemi's father maintained sporadic contact with DCF. He visited only twelve times with Noemi in three years.

Mother struggled with substance abuse and mental health. Mother had periods of compliance with treatment and remaining sober, but continually relapsed. Her most recent use was two months before the TPR with heroin. Mother needed an in-patient program but refused to attend despite DCF's efforts and referrals. At the time of trial, mother was not engaged in mental health or substance abuse treatment.

Carlos was fearful of returning to live with his mother and would rather live in the woods than with her. Noemi sees her mother as a bad person and did not want to be returned to her care. Luis has specialized needs and behavioral problems requiring a therapeutic setting. TPR was in the children's best interest.

**NOLO PLEA**

***SEE ALSO "CONSENT"***

**NON-COMMITTED TREATMENT PROGRAM**

***SEE "VOLUNTARY SERVICES"***

## NOTICE

### ***In re Christian P., 98 Conn. App. 264 (2006)***

TPR petition as to one child did not allege ongoing parental-child relationship. Mother's parental right regarding this child was terminated on the basis of no ongoing parent-child relationship. However, because Mother did not have notice of the claim of no ongoing relationship, termination on that ground was improper and case remanded.

***SEE "SERVICE OF PROCESS"***

## OBJECTIONS

### ***Doe v. Carreiro, 94 Conn. App. 626, cert. denied, 278 Conn. 914 (2006)***

Appellate Court will not reverse a trial court's decision on the basis of an evidentiary ruling whether the objection was not clearly made before the trial court. Any error in admission of evidence does not require reversal of the resulting judgment if the improperly admitted evidence is merely cumulative in nature.

## OFFER OF PROOF

## OMISSION/COMMISSION

### ***In re Nelmarie O., 97 Conn. App. 624 (2006)***

Respondent mother appeals the judgment of TPR regarding Nelmarie and her sister. After a lengthy trial, the court found that the girls had seen their parents abuse their half-brother and that respondent mother had ordered them to hit the child with a sandal. Their half brother died from injuries he sustained while in the mother's care. There was no evidence of physical abuse towards the girls. However, the court found that the parents had failed to provide them with a safe home free of violence and granted the co-terminous petitions.

Respondent mother alleged on appeal that the court improperly: (1) considered evidence gathered after the filing of the petitions for termination of parental rights, and (2) found that she failed to provide for the emotional well-being of her two minor daughters. The Appellate Court disagreed. First, Prac. Book sec. 35a-7(a) refers to the events preceding the filing of the petition, not the evidence preceding the filing of the petition. Thus it is not required that the evidence of the events be gathered before the filing of the petition. In this case, all of the events

preceded the filing of the petitions because the daughters were removed from the custody of the mother and father on September 24, 2003, and the petitions were filed two days later. Second, the appeals court concluded that the trial court did not err in finding that the mother failed to provide for the emotional well-being of both daughters by abusing the father's son in their presence and ordering them to participate in the abuse. The statute does not require that the subjects of the TPR petition be physically abused. Emotional abuse is sufficient to prevail on ground (c) – commission or omission. The fact that she was not the boy's legal guardian is not relevant to respondent mother's claim. The judgment was affirmed.

***In re Stephen M., 2006 Conn. Super. LEXIS 2799, Superior Court for Juvenile Matters, Child Protection Session at Middletown (Sept. 13, 2006, Crawford, J.)***

TPR petitions brought alleging the grounds of failure to rehabilitate, acts of omission/commission and no ongoing parent child relationship as to both the respondent mother and father. Prior to the filing of the TPR, there was a finding that reunification efforts were no longer appropriate with the father. The trial court denied the TPR petition finding that DCF failed to show by clear and convincing evidence that it made reasonable efforts to reunify the children with the mother and that she was unable or unwilling to benefit from reunification efforts. The court found that the only efforts that DCF made were visitation.

Parents were in substantial compliance with the specific steps. They self referred to parenting and anger management programs. Trial court found DCF's claim of noncompliance with a substance abuse evaluation and sexual offender treatment without merit for father. DCF documents indicated no concern with substance abuse and urine screens were negative. Father was also deemed inappropriate for sex offender treatment and therefore no referral was made. DCF warned mother of what she needed to do to avoid a TPR. Respondent mother did not ignore that her child was sexually abused, but rather, believed that it was the neighbor, and not the father, as reported to her by the child.

The trial court found that there was an ongoing parent child relationship between the children and parents. Visitation reports indicated that the parents interacted appropriately with the two girls, kissing them, reading and playing together. The children greeted the parents with hugs and recognized their parents. Visitation between Stephen and the parents were ceased by DCF. Prior to the suspension of visits, Stephen was happy to see both of his parents and interacted positively with them. Foster mother reported that Stephen asks for his parents. Any lack of ongoing parent child relationship with Stephen is a direct result of DCF's actions.

DCF, therapists, and evaluators questioned the child, Stephen. In each interview, the child denied that his father ever touched him in a sexual manner. The only disclosure made was to a police officer, whose account of the incident, the court found to lack in credibility and consistency.

### OPEN ADOPTION

*SEE "ADOPTION/OPEN ADOPTION"*

### ORDER OF TEMPORARY CUSTODY

#### ***In re Brianna C., 98 Conn. App. 797 (2006)***

Mother appealed the trial court's decision following a multi-day trial contesting the OTC, where the trial court *sua sponte*, without objection, consolidated the underlying neglect petition with the hearing on the OTC on the last day of trial. The trial court subsumed the OTC in its ruling that concluded the child was not at any time in immediate physical danger and that no grounds for the OTC existed but that the child was neglected and should be committed to DCF. Judgment was affirmed.

The trial court ordered that the child remain in the foster care of her paternal aunt, with daily 8 hour unsupervised visits by the mother. Father's visits were to be supervised. The mother had stated to a social worker that she was afraid of the father because he was a paranoid schizophrenic who had not been taking his medication. Trial court determined the child was neglected, under the statute, because the child was denied proper care and was being permitted to live under conditions injurious to her well-being, since the mother was not able to protect the child adequately from the father. The appellate court concluded that the child was neglected within the definition of § 46b-120(9)(C) and that the appellate court could not substitute its view for the discretion of the trial court in choosing whether the interest of the child to have a constant relationship with the mother was in the child's best interest when weighed against the possibility that she would be unable to prevent the child's father from causing injury to the child in the event that he failed to medicate himself appropriately.

#### ***In re Mia A., 2006 Conn. Super. LEXIS 1909, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 16, 2006, Bear, J.)***

Order of temporary custody was sustained. Mia's legal guardian was her maternal grandmother. Mother and father (to Brianna only) were arrested in their apartment for possession of crack

cocaine with intent to sell. Mother admitted that the father was physically abusive towards her in front of both of her children. Mia was living with the mother and father because the maternal grandmother no longer wanted to provide for her care. Children would be in immediate physical danger of their surroundings if returned to their mother's care given her inability to appreciate the severity of the domestic violence relationship and the impact on her children due to her associations with an alleged drug dealer.

***In re Derrick G., 2006 Conn. Super. LEXIS 2282, Superior Court for Juvenile Matters, Child Protection Session at Middletown (July 14, 2006, Bear, J.)***

The trial court sustained the order of temporary custody. The respondents mother and father have a history of domestic violence, both physical and verbal, dating back three years. The most recent incident occurred at a motel room in the presence of the child. The respondent father was arrested and a full no contact protective order was issued in favor of the respondent mother. The respondent mother also admitted to smoking marijuana three times a week with her customers when she was at work.

The trial court found that the child would be in immediate physical danger from his surroundings because the respondent mother was not able to protect herself from future domestic violence; could not follow through with treatment given her transient lifestyle in a series of motel; and was unwilling to enter a shelter where her and her child's safety would be a priority.

***In re Briana C., 2006 Conn. Super. LEXIS 2555, Superior Court for Juvenile Matters, Child Protection Session at Middletown (August 16, 2006, Bear, J.)***

The trial court found that if the child were to return to the respondent mother and her live-in boyfriend, she would be in immediate physical danger from her surroundings. The respondent mother's live-in boyfriend would inflict physical and emotional abuse on the child. The child's therapist identified the live-in boyfriend as the source of the child's anxieties and fears. The respondent mother was unwilling to accept responsibility and was in denial of the negative impact that her live-in boyfriend had on the child.

***In re Dillon L., 2006 Conn. Super. LEXIS 2556, Superior Court for Juvenile Matters, Child Protection Session at Middletown (August 17, 2006, Bear, J.)***

The trial court sustained the order of temporary custody having found that the child would be in immediate physical danger of his surroundings while in the care and custody of the respondent mother until she completed her substance, alcohol abuse and mental health assessments and

treatment. The respondent mother was arrested for driving under the influence, possession of drug paraphernalia, and interfering with a police officer. The child was not with the respondent mother during the arrest. During the investigation, the department learned that the respondent mother would not feed the child anything but a bottle and would often leave the child with relatives while she went out drinking with friends.

***In re Matthew H.*, 2006 Conn. Super. LEXIS 2577, Superior Court for Juvenile Matters, Child Protection Session at Middletown (August 18, 2006, *Bear, J.*)**

The trial court sustained the order of temporary custody. The children witnessed the respondent parents engaging in several domestic violence incidents – physical and emotional. When the police were called to investigate the matters, the respondent parents were either intoxicated or under the influence of illegal drugs. The trial court found by a preponderance of the evidence that there were omissions of proper care by the respondent parents. Also that “there was a reasonable and predictable likelihood of [the same activities] in the future that placed and resulted in each of the three children being in immediate physical danger from [their] surroundings.”

**OUT OF STATE PLACEMENT**

**PARENS PATRIAE**

**PARENT**

**PARTY**

**PAST RECOLLECTION RECORDED**

**PATERNITY**

***In re Shaiesha O.*, 93 Conn. App. 42 (2006)**

The Child Protection Session entered a judgment terminating father's parental rights. Father appealed the judgment. The judgment was reversed and the case was remanded with direction to render judgment dismissing the petition to terminate father's parental rights.

The child had been in DCF custody since she tested positive for cocaine at birth. On appeal, father argued that DCF failed to make reasonable efforts to reunify him with his daughter. The appellate court found that the DCF did not seek to have father tested for paternity until six

months after learning that he might be the father. From October through December 2002, mother named and maintained that one individual was the child's father. He was excluded by paternity test in February 2003. In December 2002 mother indicated that respondent might be Shaiesha's father. He was contacted in March 2003 and referred for testing in May. DCF filed the TPR petition on June 3, 2003, one week before the results of the paternity test were received. The worker testified she did not discuss a possible placement plan with father until after the TPR petition had been filed because visits would not have been given to father until paternity had been established. The appellate court found that prior to filing the TPR petition DCF made no efforts to foster a relationship between the child and father because his paternity had not been established. Thus, the court found that the agency did not satisfy its statutory duty to make reasonable efforts to reunify the child and her father.

### PERMANENCY PLANNING

### PETITION FOR NEW TRIAL

### PHOTOGRAPHS

### PLAIN ERROR

*SEE "APPEAL"*

### PLEADINGS

### PRACTICE BOOK

### PREDICTIVE NEGLECT

#### ***In re Brianna C.*, 98 Conn. App. 797 (2006)**

Mother appealed the trial court's decision following a multi-day trial contesting the OTC, where the trial court *sua sponte*, without objection, consolidated the underlying neglect petition with the hearing on the OTC on the last day of trial. The trial court subsumed the OTC in its ruling that concluded the child was not at any time in immediate physical danger and that no grounds for the OTC existed but that the child was neglected and should be committed to DCF. Judgment was affirmed.

The trial court ordered that the child remain in the foster care of her paternal aunt, with daily 8 hour unsupervised visits by the mother. Father's visits were to be supervised. The mother had stated to a social worker that she was afraid of the father because he was a paranoid schizophrenic who had not been taking his medication. Trial court determined the child was neglected, under the statute, because the child was denied proper care and was being permitted to live under conditions injurious to her well-being, since the mother was not able to protect the child adequately from the father. The appellate court concluded that the child was neglected within the definition of § 46b-120(9)(C) and that the appellate court could not substitute its view for the discretion of the trial court in choosing whether the interest of the child to have a constant relationship with the mother was in the child's best interest when weighed against the possibility that she would be unable to prevent the child's father from causing injury to the child in the event that he failed to medicate himself appropriately.

***In re Christian M.*, 2006 Conn. Super. LEXIS 293, Superior Court for Juvenile Matters, Child Protection Session at Middletown (January 30, 2006, Taylor, J.)**

Neglect petitions were filed concerning the respondent mother and her three children. A coterminous petition regarding the respondent father to Annette G. was filed alleging acts of omission/commission. Annette G. suffered multiple fractures to her legs, arms, ribs and skull as a result of abuse. After the neglect petition was filed, Mignette O. disclosed that Annette G's father sexually abused her starting at the age of six, which included anal penetration. The respondent mother did not believe that either Annette's father physically abused her or that he sexually abused Mignette.

The trial court, citing *In re Michael D.*, 58 Conn. App. 119, 752 A.2d 1135, *cert. denied*, 254 Conn. 911, 759 A.2d 505 (2000), noted that "our statutes clearly permit an adjudication of neglect based on a potential for harm or abuse to occur in the future." Juvenile courts do not have to wait until the harm occurs before acting, and thus, the court found that Christian and Mignette were neglected even though they were not physically harmed in the same manner as Annette.

The trial court also found by clear and convincing evidence that DCF proved the ground of acts of omission and commission. Annette's serious physical injuries were non-accidental and/or inadequately explained. The father's explanation was deficient as to how the child acquired the physical injuries. The father admitted to causing these injuries by using excessive force while changing the child's diaper. The court found that the father fabricated aspects of his story to

exculpate himself, but the totality of the evidence indicated that he was responsible for the injuries.

The court terminated the parental rights of Annette's father, having found that it was in her best interest. The father was offered reunification services, e.g., substance abuse and anger management, which he failed to accept. Additionally, he failed to complete many of the provisions in the court ordered specific steps. Based on the totality of the circumstances, the court found that the father had not made realistic and sustained efforts to conform his conduct and minimally accept responsibility for his actions.

With regard to the neglect petitions, the court committed the children to the care and custody of DCF. The mother refused to accept that Annette's father has any culpability for either Annette or Mignette's injuries. The mother refused to accept reunification services unless Annette's father could also participate. The court ordered evaluator opined that she questioned mother's ability to provide for the children's emotional needs and the long-term effects it would have on them, and therefore, could not recommend immediate reunification.

## PRESUMPTIONS

### PRIMA FACIE EVIDENCE

*SEE ALSO "OMISSION/COMMISSION"*

### PRIOR BAD ACTS

### PRIOR CONSISTENT STATEMENTS

### PRIOR INCONSISTENT STATEMENTS

### PRIOR PENDING ACTION DOCTRINE

## PROBATE

***In re Logan S., 2006 Conn. Super. LEXIS 1241, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 27, 2006, Jongbloed, J.)***

Father sought review of judgment by Probate court terminating his rights. Trial de novo held. Father was incarcerated most of his life, had no involvement with son before or after

incarceration. TPR granted based on no ongoing parent child relationship and abandonment.

PROBATION

PRO SE LITIGANTS

PROSECUTORIAL IMMUNITY

PROTECTION OF CHILDREN

PROTECTIVE ORDER

PROTECTIVE SUPERVISION

PSYCHIATRIC AND PSYCHOLOGICAL PRIVILEGE

*SEE ALSO* "DRUG AND ALCOHOL"

*SEE ALSO* "CONFIDENTIALITY"

PSYCHOLOGICAL EVALUATION

*SEE* "COURT-ORDERED EVALUATION"

PUBLICATION

*SEE* "SERVICE OF PROCESS"

PUTATIVE FATHER

*SEE ALSO* "PATERNITY"

QUALIFIED IMMUNITY

QUALIFIED LAW ENFORCEMENT PRIVILEGE

RACE

*SEE* "CULTURAL AND LANGUAGE ISSUES"

## RAPE SHIELD STATUTE

## REACTIVE ATTACHMENT DISORDER

## REASONABLE EFFORTS

### ***In re Shaiesha O.*, 93 Conn. App. 42 (2006)**

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The child had been in DCF custody since she tested positive for cocaine at birth. On appeal, father argued that DCF failed to make reasonable efforts to reunify him with his daughter. The appellate court found that the DCF did not seek to have father tested for paternity until six months after learning that he might be the father. From October through December 2002, mother named and maintained that one individual was the child's father. He was excluded by paternity test in February 2003. In December 2002 mother indicated that respondent might be Shaiesha's father. He was contacted in March 2003 and referred for testing in May. DCF filed the TPR petition on June 3, 2003, one week before the results of the paternity test were received. The worker testified she did not discuss a possible placement plan with father until after the TPR petition had been filed because visits would not have been given to father until paternity had been established. The appellate court found that prior to filing the TPR petition DCF made no efforts to foster a relationship between the child and father because his paternity had not been established. Thus, the court found that the agency did not satisfy its statutory duty to make reasonable efforts to reunify the child and her father.

### ***In re Shalahah J.*, 2006 Conn. Super. LEXIS 1138, Superior Court for Juvenile Matters, Child Protection Session at Middletown (April 21, 2006, Crawford, J.)**

DCF sought termination of parental rights. Mother consented, but "conditional" as to termination of father's rights. Court denied termination as to father and returned case to regional court as to issue of mother's consent and disposition of the case. Due to the conditional consent, the court held that DCF did not prove her consent by clear and convincing evidence. As to father, a prior court had previously determined that reasonable efforts were no longer appropriate, however, the court found that DCF failed to establish that reasonable efforts to reunify with father were made, failed to show father was unable or unwilling, and noted that the prior court finding came sixteen months after the petition was filed. Court found there was

considerable dispute as to the number of visits father was offered, the number he attended, and the reasons for missed visits. Court also noted contradictory evidence regarding housing, the relationship between the father and child, and the father's criminal history. Thus, aside from the issue with reasonable efforts, the court determined DCF did not prove failure to rehabilitate as to father.

## REBUTTAL

## REDIRECT EXAMINATION

## RELATIVES

## RELEVANCY

## RELIGION

## REMOVAL OF LIFE SUPPORT SYSTEMS

## REMOVAL OF PARENT AS GUARDIAN

## RES JUDICATA / COLLATERAL ESTOPPEL

## RESIDUAL HEARSAY EXCEPTION

## RESTRAINTS

## RETROACTIVE APPLICATION OF A STATUTE

## REUNIFICATION

*SEE "REASONABLE EFFORTS"*

## REVOCAION OF COMMITMENT

### ***In re Patricia C., 93 Conn. App. 25, cert. denied, 277 Conn. 931 (2006)***

To revoke commitment, parent must first prove that no cause for commitment presently exists. Second, DCF must fail in its burden to establish that it would be in the best interests of the children to remain committed. Although the trial court failed to identify the first prong, under the facts and circumstances of this case, the Appellate Court affirmed the denial the revocation

based on the trial court's clear and unequivocal finding that the children's best interests were served by remaining with the foster parents.

***In re Nasia B.*, 98 Conn. App. 319 (2006)**

No party filed a written motion to revoke the child's commitment. The purpose of requiring such a writing provides for orderly administration and fulfillment of requirements of due process. When a trial court *sua sponte* revokes a commitment, it steps outside the statutory authority of 46b-129(m) and (o), which protect the due process rights of DCF, the parents, foster parents, and best interest of the child.

**RIGHT TO BE PRESENT AT TRIAL**

**RIGHT TO COUNSEL**

***SEE* "ATTORNEY"**

**RIGHT TO REMAIN SILENT**

***SEE ALSO* "FIFTH AMENDMENT"**

**RISK OF INJURY**

**SCIENTIFIC EVIDENCE**

**SEQUESTRATION**

**SERIOUS PHYSICAL INJURY**

***In re Rachel J.*, 97 Conn. App. 748 (2006)**

Mother appealed the termination of her parental rights based upon DCF's coterminous petitions. She claimed that the trial court improperly concluded that one child sustained a serious bodily injury under Conn. Gen. Stat. § 17a-112(j)(3)(F) and erroneously found that it was in the child's best interest to terminate her parental rights. The trial court judgment was affirmed.

On appeal, mother challenges whether child sustained a "serious physical injury." Appellate Court notes that the term is not defined in our child welfare statutes and declines to apply criminal definitions. The court looks to the dictionary definition of serious meaning "to cause

considerable distress, anxiety or inconvenience." In assaulting the child, the mother caused a serious injury that resulted in a severe fracture of the child's elbow. The seriousness was manifested by the mother's tactical decision to delay medical treatment in order to avoid DCF intervention.

Appellate Court also found termination of parental rights in child's best interest as child had strong negative feelings about the mother. Child was also exposed to physical, sexual and emotional abuse and best interest served by terminating mother's parental rights.

## SERVICE

*SEE "REASONABLE EFFORTS"*

## SERVICE OF PROCESS

## SEXUAL ABUSE

## SIBLING

## SIXTH AMENDMENT

## SOCIAL SECURITY BENEFITS

## SOCIAL STUDY

## SOCIAL WORKER

## SOVEREIGN IMMUNITY

### ***Manifold v. Ragalia, 94 Conn. App. 103 (2006)***

DCF filed a motion to reconsider the motion to dismiss in light of the Connecticut Supreme Court's decisions in *Miller v. Egan*, 265 Conn. 301, 828 A.2d 549 (2003), and *Prigge v. Ragaglia*, 265 Conn. 338, 828 A.2d 542 (2003). Relying on those decisions, the court granted the motion to dismiss with respect to the claims against DCF in their official capacities that sought monetary damages. The court, however, again denied the motion to dismiss the remaining claims, which sought declaratory relief and an injunction against DCF for actions in official capacities and monetary relief for actions in their individual capacities.

After additional discovery, DCF filed a motion for summary judgment, with which they submitted affidavits, deposition transcripts and other documentary evidence. DCF argued they were protected from suit and liability by sovereign immunity and statutory immunity because there was no genuine issue of material fact as to whether they had acted beyond their statutory authority or whether their actions were wanton, reckless or malicious. The court denied the motion for summary judgment, stating that because the defendants sought summary judgment on the ground that the court lacked subject matter jurisdiction to hear the case, the motion would be treated as a motion to dismiss. Accordingly, the court applied the standard for a motion to dismiss and reached the same conclusion that it had in its earlier decisions. This appeal followed.

In agreeing with DCF, the appellate court found that the trial court should have considered the factual submissions that accompanied the motion for summary judgment, rather than relying solely on the pleadings. "[w]e are persuaded that the circumstances of this case provide strong support for the proposition that a motion for summary judgment can and should be used to address claims for lack of subject matter jurisdiction in certain circumstances, particularly when, as here, a motion to dismiss has been denied, but additional discovery may provide the court with further evidence on which to decide the claim." (p. 120). The case was remanded to the trial court with the instruction to treat the matter as a motion for summary judgment.

However, the appellate court did not find the trial court improperly denied DCF's motion for summary judgment by failing to consider the claim that there was no genuine issue of material fact as to whether their conduct constituted intentional infliction of emotional distress and that DCF was entitled to judgment as a matter of law. Although DCF framed the argument as one challenging the trial court's subject matter jurisdiction, the appellate court found that the assertion that there is no genuine issue of material fact supporting the plaintiff's claim for intentional infliction of emotional distress does not involve the court's subject matter jurisdiction. Rather, DCF is merely asserting that the evidence concerning their conduct does not, as a matter of law, support the plaintiffs' claim sounding in intentional infliction of emotional distress.

DCF asserted that the plaintiffs were unable to establish a set of facts to support the claim that the DCF's conduct constituted intentional infliction of emotional distress. In its memorandum of decision, however, the court did not address that claim. Instead, it focused only on the defendants' arguments regarding sovereign and statutory immunity. The appellate court

referred to Prac. Book § 66-5 and noted that "[t]he proper procedure by which an appellant may ask the trial court to provide the factual and legal basis for a ruling, or to address a matter that it has overlooked in its decision, is to file a motion for articulation." (p. 124)

## SPECIAL EDUCATION

## SPECIAL NEEDS

*SEE "UNCARED FOR"*

## SPECIFIC STEPS

***In re Leah S., 96 Conn. App. 1, cert. granted, 280 Conn. 911 (2006), limited to the following issue: Did the Appellate Court properly affirm the trial court's finding of contempt against the petitioner?***

DCF sought review of the judgment of the trial court, which found it in contempt for willful failure to comply with the court's orders in regard to a child. DCF claimed the trial court improperly held it in contempt because the orders were ambiguous and its finding of contempt was unsupported by the evidence. The judgment of the trial court was affirmed.

The trial court found that despite Leah's "unmistakable and urgent" needs, DCF failed to implement the specific steps ordered by the court in April, May and October, 2003. In particular, DCF did not comply with the order that it take all necessary measures to ensure Leah's safety and well-being because it failed to seek a residential placement for Leah, and to provide Leah with psychiatric care for her serious mental illness and her persistent headaches. The court also found DCF failed to comply with the order requiring it to provide case management services because it failed to offer Leah's parents training to assist them in managing children with mental health issues, and DCF failed "to develop and implement a coordinated, systematic and comprehensive treatment modality" to assist in the reunification of the family. In addition, the trial court found that DCF's failure to provide Leah's parents with training to assist them in addressing the mental health needs of their children constituted a failure to follow the specific step that DCF refer the respondents to the appropriate services. Finally, the court found DCF's failure to take any action to facilitate counseling between Leah and her brother constituted a violation of its October, 2003 order that DCF "facilitate counseling between Leah and [her brother] to resolve sibling difficulties."

DCF's failure to comply with the court's orders constituted indirect contempt because it occurred outside the presence of the court. To constitute contempt, a party's actions must be willful. Whether a good faith dispute or misunderstanding over the terms of an obligation prevents a finding of willfulness is within the trial court's discretion. However, to the extent that a party subject to a court's orders does not fully understand the obligation it is incumbent on that party to seek clarification from the court.

The appellate court held that, the trial court's orders provided ample direction to DCF. However, if in fact, DCF was uncertain as to the trial court's mandates, it was DCF's responsibility to seek clarification and further direction from the court. When the trial court ordered DCF to undertake specific steps, its orders were directives and not mere aspirations due to the case being a difficult one. Further, the record contained ample circumstantial evidence to support the trial court's finding of contempt based on DCF's willful failure to comply with the court's orders.

## STANDARD OF PROOF

## STANDBY COUNSEL

## STANDING

### ***In re Christina M.*, 280 Conn. 474 (2006)**

Termination petition granted on failure to rehabilitate grounds. Parents appeal, calling ineffective assistance of counsel for their children. Supreme Court held that parents have standing to challenge the adequacy of their children's reparation because the rights of the parents are inextricably intertwined with those of their children. Parents, however, could not prevail on their claim that the trial court erred in failing *sua sponte* to appoint a guardian ad litem to advocate the children's wishes. There was insufficient evidence to support that the trial court knew or reasonably should have known that a conflict existed between what the children wanted and what their attorney advocated.

## STATE OF MIND EXCEPTION

## STATUTORY CONSTRUCTION

## STATUTORY PARENT

## STAY OF PROCEEDINGS

## SUBJECT MATTER JURISDICTION

*SEE "JURISDICTION"*

*SEE ALSO "MOTION TO DISMISS"*

## SUBSEQUENT UNCHARGED MISCONDUCT

## SUBSTANCE ABUSE

## SUBSTANTIATION

## SUGGESTION OF DEATH

## SUMMARY JUDGMENT

### ***Manifold v. Ragalia, 94 Conn. App. 103 (2006)***

In agreeing with DCF, the appellate court found that the trial court should have considered the factual submissions that accompanied the motion for summary judgment, rather than relying solely on the pleadings. "[w]e are persuaded that the circumstances of this case provide strong support for the proposition that a motion for summary judgment can and should be used to address claims for lack of subject matter jurisdiction in certain circumstances, particularly when, as here, a motion to dismiss has been denied, but additional discovery may provide the court with further evidence on which to decide the claim." (p. 120). The case was remanded to the trial court with the instruction to treat the matter as a motion for summary judgment.

However, the appellate court did not find the trial court improperly denied DCF's motion for summary judgment by failing to consider the claim that there was no genuine issue of material fact as to whether their conduct constituted intentional infliction of emotional distress and that DCF was entitled to judgment as a matter of law. Although DCF framed the argument as one challenging the trial court's subject matter jurisdiction, the appellate court found that the assertion that there is no genuine issue of material fact supporting the plaintiff's claim for intentional infliction of emotional distress does not involve the court's subject matter jurisdiction. Rather, DCF is merely asserting that the evidence concerning their conduct does not, as a matter of law, support the plaintiffs' claim sounding in intentional infliction of emotional distress.

## TELEPHONE CONVERSATION

## TEMPORARY RESTRAINING ORDER

## TERMINATION OF PARENTAL RIGHTS

### ***In re Claudia F.*, 93 Conn. App. 343, cert. denied, 277 Conn. 924 (2006)**

Respondent mother appealed the trial court's decision to adjudicate three of her children neglected and commit them to the care, custody, and guardianship of DCF. After filing her appeal, the mother consented to the termination of her parental rights. In dismissing the mother's appeal from the neglect proceedings, the court found that the appeal was moot because the mother voluntarily terminated her parental rights. An actual controversy no longer existed, and there was no practical relief that could be granted. Further, the case did not fall within the collateral consequences exception to the mootness doctrine. Due to the unappealed OTC and subsequent voluntary TPR, DCF is on notice that there are concerns with Mother's parenting ability. Thus, the mother had failed to show how the finding of neglect in the neglect proceeding would produce collateral consequences beyond the consequences that could flow from the unappealed order of temporary custody. The appeal was dismissed.

### ***In re Halle T.*, 96 Conn. App. 815, cert. denied, 280 Conn. 924 (2006)**

Respondent father challenged the trial court's judgment, terminating his parental rights with respect to Halle. The Appellate Court affirmed the judgment.

The father first claimed that the trial court violated his constitutional rights by improperly parroted significant portions of DCF social studies in its written memorandum of decision. Although the Appellate Court repeatedly emphasized its disapproval of this practice, it did not find that it resulted in less than a fair trial. The Appellate Court's review of the record revealed that DCF set forth clear and convincing evidence to support the trial court's factual findings regarding the termination of parental rights, despite the parroting of the social studies.

Further, the Appellate Court disagreed with the father's second claim that the evidence adduced at trial was insufficient to terminate his parental rights. Rather, the Appellate court found that the evidence supported the trial court's conclusion that a father failed to attain a degree of rehabilitation sufficient to warrant the belief that, at some time in the foreseeable future, he would be capable of assuming a responsible position with respect to his child's care. Accordingly, the trial court's decision to terminate the father's parental rights was not clearly erroneous. The

child suffered from the effects of fetal alcohol syndrome and exhibited numerous developmental disabilities. The father's progress, made over approximately two years, was insufficient when considered in relation to the child's special needs and her need for permanency.

***In re Davonta V.*, 98 Conn. App. 42, cert. granted, 280 Conn. 947 (2006)**

Mother's sole claim on appeal was that trial court improperly concluded that termination of parent's rights was in Davonta's best interests. Davonta was 14 years old at the time of the TPR trial, living with a foster family who is committed to being a long-term placement for him, but who has not made a decision to adopt. Mother had a long-term history of instability due to drug abuse, mental illness and criminal behavior, which resulted in her incarceration. She failed to stabilize her life despite DCF intervention and services. The majority of the Appellate Court held that the trial court's analysis of the child's best interest properly focused on mother's inability to provide a stable home and the child's positive and significant improvements since his placement with a foster family.

Judge Schaller, dissenting, concluded that termination was inappropriate in this situation as the child's best interest is not served by terminating his legal relationship with the mother. In moving to do so, DCF has failed to protect the child and punished both parent and child. Closure at the expense of the child's birth relationships is meaningless. Permanency to a 14 year old whose only remaining blood relationships are terminated is meaningless. DCF chose termination against the advice of Dr. Berkowitz and the child's guardian ad litem.

***In re Shaun B.*, 97 Conn. App. 203 (2006)**

The Appellate Court held that DCF presented clear and convincing evidence that mother failed to rehabilitate herself and that the trial court's determination that termination of the mother's parental rights was in the best interest of the child was not clearly erroneous, as mother's rehabilitation was not foreseeable within a reasonable time.

***In re Christian P.*, 98 Conn. App. 264 (2006)**

TPR petition as to one child did not allege ongoing parental-child relationship. Mother's parental right regarding this child was terminated on the basis of no ongoing parent-child relationship. However, because Mother did not have notice of the claim of no ongoing relationship, termination on that ground was improper and case remanded.

## TERMINATION OF PARENTAL RIGHTS (GROUND E)

### ***In re Shakyra C.*, 2006 Conn. Super. LEXIS 1844, Superior Court for Juvenile Matters, Child Protection Session at Middletown (June 15, 2006, Taylor, J.)**

The father did not appear at trial. Father failed to maintain contact with the child, the foster parent or DCF. TPR granted on basis of abandonment. Mother has a long history of substance abuse, resulting in the TPR of two of her other children. Although mother participated in various programs offered to her by DCF, she refused to commit to appropriate substance abuse treatment and counseling on a long-term basis. Mother refused to access DMR services, left a sober house, went into the community, and resided with a recovering drug addict. TPR granted based on failure to rehabilitate (Ground E).

## TERMINATION OF PARENTAL RIGHTS (GROUND F)

### ***In re Rachel J.*, 97 Conn. App. 748 (2006)**

Mother appealed the termination of her parental rights based upon DCF's coterminous petitions. She claimed that the trial court improperly concluded that one child sustained a serious bodily injury under Conn. Gen. Stat. § 17a-112(j)(3)(F) and erroneously found that it was in the child's best interest to terminate her parental rights. The trial court judgment was affirmed.

On appeal, mother challenges whether child sustained a "serious physical injury." Appellate Court notes that the term is not defined in our child welfare statutes and declines to apply criminal definitions. The court looks to the dictionary definition of serious meaning "to cause considerable distress, anxiety or inconvenience." In assaulting the child, the mother caused a serious injury that resulted in a severe fracture of the child's elbow. The seriousness was manifested by the mother's tactical decision to delay medical treatment in order to avoid DCF intervention.

Appellate Court also found termination of parental rights in child's best interest as child had strong negative feelings about the mother. Child was also exposed to physical, sexual and emotional abuse and best interest served by terminating mother's parental rights.

## TEXT BOOK

## THIRD PARTY CULPABILITY

## THREAT

## TRANSFER OF GUARDIANSHIP

### ***In re Jordan T., 2006 Conn. Super. LEXIS 1553, Superior Court for Juvenile Matters, Child Protection Session at Middletown (May 23, 2006, Bear, J.)***

TPR petition filed alleging failure to rehabilitate by the respondent mother. Respondent father previously consented to the TPR petition. The maternal grandparents filed a motion to transfer guardianship, which was consolidated with the TPR trial. Mother did not appear for the trial and her whereabouts were unknown. Trial court denied the maternal grandparents' motion to transfer guardianship finding that it was not in the child's best interest. Trial court found in favor of DCF. Mother continued to struggle with her substance abuse, namely heroin, cocaine and alcohol. Mother did not participate in any programs to deal with her chronic substance abuse issues. TPR was in the child's best interest and for him to remain with his pre-adoptive relative foster parents. Child was twenty-three months old and had lived the past eighteen months with the relative foster family.

## TRIAL

## UNCARED FOR

## UNIFORM ADMINISTRATIVE PROCEDURE ACT

SEE "ADMINISTRATIVE APPEALS" AND "ADMINISTRATIVE LAW"

## UNIFORM CHILD CUSTODY JURISDICTION ACT

## VAGUENESS

ALSO SEE "CONSTITUTIONAL LAW"

## VERBAL ACTS

## VIDEOTAPED TESTIMONY

SEE ALSO "CHILD'S TESTIMONY"

VISITATION

VOLUNTARY SERVICES

WAIVER

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