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Children's Law Exam
Spring 2004

UNM School of Law
Final Examination

Dean Scarnecchia
Professor Grossman
9:00 a.m. to 12:00 noon
Monday, May 3, 2004
Thursday, May 13, 2004

INSTRUCTIONS

This is a three-hour exam. You must answer three of the questions below. You must answer both Question #1 and Question #2. You must answer either Question #3 OR Question #4. You should spend up to one-hour on each question.

This is an open-book exam. "Open book" means that you may use only the casebook, any additional class handouts, and your own notes.

You will be evaluated for the precision, creativity, thoroughness and organization of your answer. The conclusions you reach are less important than the strength of your analysis.

Question #1: You MUST answer this question. Take up to one hour to complete. The answer to this question is worth 20 points out of a total of 60 points for the exam.

Choose ONLY ONE of the following hypotheticals, a or b, and answer the questions related to that one hypothetical. Please cite specific cases, when applicable (you need only supply the name of the case, not the full citation).

- a. Violet's case: Violet is a 16 year-old girl. She lives with her biological mother, Jane, and Jane's long-term partner, Kathy. Jane and Kathy would like to be married in the State of New Mexico, but because they are both women they were denied a marriage license. Violet is outraged that her two moms cannot get married and she has read a lot about how, as a result, they do not get many benefits and protections that are provided to married couples in New Mexico. Violet has a meeting with her best friend's dad, who is an attorney. She tells him that she would like to sue the State of New Mexico for denying her the benefit of living with married parents.
 - i. If you are the attorney who meets with Violet, what are the legal and factual issues that you must resolve in order to tell Violet whether or not you can help her?
 - ii. Assume the attorney decides to file the case for Violet, what are the constitutional arguments that might be made to support Violet's case?
 - iii. What are the constitutional arguments that might be made by the State Attorney General's Office to defend against Violet's case?

- iv. How do you think the US Supreme Court would decide Violet's case, based on the cases you have read in this class?

OR, answer the questions after this case:

- b. Victor's case: Victor is a five year-old boy. He has lived with his mother, Delores, and stepfather, David, since he was 6 months old. His biological father, Ed, never married his mother and never provided support or visited Victor. His biological paternal grandparents, however, stayed in touch and regularly gave Victor Birthday and Christmas gifts. David married Delores when Victor was three years old. David never adopted Victor.

Delores suddenly died two months ago. Yesterday, David, the stepfather, received a motion for custody, filed by Ed, the biological father. David has come to your law office to seek assistance. He wants to maintain custody of Victor. He loves him as his own son and Victor has never known any other father.

- i. What are the legal and factual questions that you must resolve in order to tell David whether or not you can help him?
- ii. Assume that your State has a very strict provision denying standing to claim a right to custody to anyone except a child's biological or adoptive parents, unless both biological parents have died or have had their parental rights terminated.

What constitutional arguments might be made by David to challenge the State's denial of his right to claim custody of Victor?

- iii. Assume that you represent the biological father and that his hope is to have Victor remain in his family and to live with the grandparents whom he knows. What constitutional arguments might Ed use to defend against David's claim for custody?
- iv. Assume that the trial court appoints you to serve as Victor's attorney in this case. How will you decide what position to take on the question of custody on behalf of Victor? What constitutional arguments might be made for Victor?
- v. How do you think the US Supreme Court would decide David's case, based on the cases you have read in this class?

Question #2: You MUST answer this question. Take up to one hour to complete. The answer to this question is worth 20 points out of a total of 60 points for the exam.

A neighbor informed protective services that the Thomas home was a health hazard and the children were in danger. When he investigated, the social worker found the following evidence:

- Joe, age 5, was clothed in torn pants, no shirt, and soiled shoes with no socks. He was actively playing with his siblings and seemed affectionate with his mother, but seemed to have very delayed speech, sounding more like a 3 year old.
- Shelly, age 3, was still wearing her pajamas at 3:00 pm. The pajamas appeared old and dirty. She was barefoot and her feet were covered with dirt and grime. She seemed happy at play, but appeared extremely small for her age.
- Henry, age 1, slept throughout the visit. He was propped on the couch with a pillow and had an empty baby bottle propped next to him. He appeared physically healthy.
- The children live with their biological mother, Corrine Thomas. She is 20 years old, unemployed, and dropped out of high school at age 16. All of the children have the same father, Joseph, who abandoned the family shortly after Henry's birth. Corrine does not know where he is and has no contact information for him.
- The protective services worker has never seen such a filthy home. There are three cats and two dogs that live with the family in their small two- bedroom apartment. The animals roam freely and there is evidence of animal droppings throughout the house. The pet food is left open and at a level that the children can reach. The kitchen sink is full of dirty dishes and apparently moldy food. In each of the rooms in the small apartment, there are stacks of newspapers and magazines, as well as boxes of items such as clothing and toys. These stacks tower above the children and interfere with room entryways. The beds are unmade and the mattresses have no sheets or blankets. The children's clothes are strewn on the floor.

1. The protective services worker consults with his supervisor about whether the children should be removed and whether there is enough evidence to file a petition seeking jurisdiction over this family in children's court. He would like to keep the children in foster care. The supervisor sends him to you, the attorney for the state child protection agency, for a consultation. What further factual information would you like to obtain to help you determine the strength of the case? What are the legal issues you should consider at this stage of the proceedings to decide what to do next? (Base your answers on the course readings and not on any particular state statute.)

2. After you have represented the agency on the case for 30 days and the children have remained in foster care, Corrine reveals to the social worker that Joseph is a member of an Indian tribe and, indeed, Joseph's parents (the children's paternal grandparents) live on the tribe's reservation in your State. What steps must you and the State court now take to comply with the ICWA notice and transfer rules?

3. Assume that Joseph's tribe receives proper notice and the tribe's court declines jurisdiction. In addition, it is revealed that Corrine is addicted to crack cocaine, is now living with a man with a record of sexually abusing his own minor child, and has failed to

visit the children for the 6 months that they have now been in foster care. The State attorney has filed a termination of parental rights petition. If you are now Corrine's attorney, what arguments will you make in her defense? What special standards for termination of parental rights must the State Attorney meet, if any?

4. You are now the attorney for Joe, Shelly and Henry. You learn that the State Attorney plans to petition for termination of parental rights. The state child protection agency has presented the following three placement options for the children if termination of parental rights is granted:

- a. Reside with Joseph's parents (the paternal grandparents) under a kinship guardianship or an adoption. They are both over 70 years old. The grandfather has very bad arthritis. They have raised three children of their own, plus two other grandchildren. They are loving people with good reputations. They have never had a close relationship with the Thomas children.
- b. Continue to reside with the foster family with whom they have resided since their removal from Corrine's home. The family is not Indian, but lives very close to Joseph's tribe's reservation and they are willing to apply to be licensed by the tribe. They are a middle-aged couple with no children who have grown very fond of the Thomas children. They have begun to work with the kids to overcome some of the delays they developed while in the home of their mother.
- c. Corrine's sister, Angela, is willing to adopt the children. She has had contact with them throughout their lives and they call her "Aunt Angie." Angela is not married and has a full-time job as a restaurant manager. She cannot quit that job, but she is willing to place the younger kids in a good day care center if she can obtain an adoption subsidy payment from the State. She and Corrine are not Indian. Angela would be more willing than the other two families to allow Corrine to have a continuing relationship with the children, but the social worker is a little worried that Angela might not be able to protect the kids from Corrine.

As the children's attorney, what further information would you like to know to help you develop a recommendation for the children's pre-adoptive placement? Given the information that you have, what is your recommendation to the court and why?

Question #3: You MUST answer Question #3 OR Question #4. Take up to one hour to complete. The answer to this question is worth 20 points out of a total of 60 points for the exam.

Many practitioners and scholars have commented on the difficulties of deciding what approach should be taken in representing children in child abuse and neglect cases. They debate whether the attorney should represent the child's wishes, using a model similar to that used in representing adults, or, should the attorney represent the child's best interests, because of the diminished capacity of children to make important decisions?

Considering both the historical and current goals of the juvenile delinquency system, what approach do you believe an attorney representing an accused delinquent should take? What are the similarities and differences between the purposes of the child protection system and the delinquency system and how should those similarities and differences affect an attorney's representation of delinquents?

Finally, if you could make a single reform in the juvenile delinquency system, as you understand the system based on your class readings, what reform would you choose and why?

Question #4: You MUST answer Question #3 OR Question #4. Take up to one hour to complete. The answer to this question is worth 20 points out of a total of 60 points for the exam.

Review the provisions of the United Nations Convention on the Rights of the Child listed below. Based on your current understanding of the legal treatment of children in the United States, select one or more of the Convention provisions and describe some of the arguments you might make alleging that the United States is in violation of the provision(s). What are some of the reforms that would be required to bring the United States into compliance with the Convention?

Article 3

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 19

State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 40

State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human

rights and fundamental freedoms of others and which take into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

END OF EXAM

Congratulations and have a wonderful summer!