

VPRC- Minor Guardianship Project Report 12-9-13

Background: Custodial Minor Guardianship (MG) is a court process used to transfer both physical and legal rights and responsibilities (custody) to guardian caregivers for an indeterminate length of time. It is implemented in the Probate Courts. There is a pending bill in the Vermont Legislature to amend the current guardianship statute based on recommendations from a legislative study committee. Although it is not reflected in the bill as presented, the committee recommended that a robust support system for the guardians, parents and children be available but did not specify what it should consist of nor how to fund it. The Minor Guardianship Project¹ tested the need for such a support structure and what specific elements were most needed for the support of the families involved.

Purposes of the Project:

- to CREATE a MG infrastructure for legal information/advocacy and support services for the involved families;
- to TEST a roadmap for families (1) to be informed about the legal implications of MG; (2) to structure a plan for the purpose, length, obligations and conditions of MG with family members (3) and determine how the minor guardianship would be terminated.

Place: Addison and Chittenden Probate Courts:

Project Staff: Sandi Yandow, Kinship Peer Support, K.I.N. – K.A.N. Vermont
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Scope of Project: Pilot group consisted of 11 families with 16 involved children who had already filed for custodial minor guardianship or were contemplating filing. The staff provided legal education, financial and social supports that were strength based and multigenerational in scope to help the families make informed decisions and to provide opportunities for supports to carry out their decisions.

Grounds Stated in Petition as to why MG was needed – (4 options available):

No parent objects (6) was the option most cited (only 5 of those petitions included Parent Consent forms); No reason stated and Parent incompetent or unsuitable followed with (2) each.

Reasons identified in body of Petition why MG was needed: Substance Abuse was cited most often (5) followed by DCF demand (2), Homelessness, Threat of Incarceration, Need for decision making power, Parent Can't be located (1 each)

After meeting with the families, the staff concluded that all 11 mothers had mental health issues and 10 mothers had substance abuse issues. There was less information provided about the fathers and therefore insufficient facts from which to draw conclusions.

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Pre Hearing Consultations: Outreach (phone and/or letter) was attempted with all parents and proposed guardians listed on the petitions in order to schedule a pre-hearing consultation to:

- Explore the family circumstances leading to consideration of Minor Guardianship (MG);
- Educate about the array of legal options available to families considering a change in placement and supervision of a child including power of attorney, contract, Children in Need of Care and Supervision (CHINS) when DCF was involved, MG, maintenance of status quo; and about the legal and service delivery system consequences of each option.
- Inform about the supports and services available to the kinship triad (parents, children, legal guardians) and the potential impact of each resource

The staff had pre-hearing consultations as follows:

- With proposed guardians: 8
- With mother and proposed guardians: 2
- With father and proposed guardians: 1
- Proposed guardian and minor child: 1
- With all parties: 1 (ended with no petition filed as proposed guardian went out of state).

Court Results for the Families: 10 filed petitions for minor custodial guardianship; 1 did not file after hearing alternative options. 8 resulted in custodial minor guardianship and 2 had status conferences and withdrew petitions.

Navigation Assistance Provided to Families: Follow up Assistance after Hearing: 10 (1 resolved issues before hearing)

- Child Care Subsidy, WIC, Free and Reduced Price Lunch, Medicaid Transportation: 10
- Reach Up Child Only Grant and Medicaid: 10
- Parent-Child Contact: 7
- Substance abuse/mental health treatment: 5
- Access to General Assistance/Housing: 3
- Concurrent Criminal Proceedings: 2
- Long term peer navigation services: 2
- DCF case workers and safety planning meeting: 1
- Parent Enrichment: 1

DCF Involvement in the Families: DCF has a policy in place, as follows.

DCF Policy 85: Minor Guardianships: *If it is necessary for the child(ren) to be in the care of an alternative caretaker on an extended basis in order to address identified dangers, it is not appropriate for the social worker to encourage or recommend that the family address that concern through the use of probate court for a minor guardianship.*

5 families had open cases with DCF Family Services.

Family #1: In meeting with DCF worker, mother and prospective guardian, the DCF worker said: “If mom does not file a petition for guardianship by Friday, DCF will file a CHINS petition on Monday”.

Family #3: DCF worker told great grandma: “unless you take kids, I will file a (CHINS) affidavit.” Great Grandma had the kids and wanted to take them out of state. She came to the Project wanting help with MG petition. In pre-petition meeting Dad (on phone) did not want MG. Options discussed. POA signed. Kids preschool enrollment thus easier to accomplish and POA was a legally accepted option in state. MG not needed to give caregiver needed authority.

Family #5: In a written DCF family safety plan, mother was directed to give guardianship to maternal grandmother including directions of how to do it and what to do if father did not agree.

Family #11: In written DCF safety plan: “Mom is agreeing to minor guardianship. Maternal grandparents will get probate court paper work. Probate guardianship forms will be submitted by (date). On the following day DCF will check to insure guardianship is filed. If not, DCF will file an affidavit for custody”. Once MG issued, DCF did not close case within 90 days per policy. District Director overrode the policy because the mother was pregnant. Result of policy override: Placed guardian in middle, with both DCF and mother questioning her decisions, and autonomy was fractured.

Family #10: The teenager was living with her mother in New York State where the child protection agency was involved. DCF did a home study of the aunt who had applied for MG.

Findings:

- Substance Abuse/mental health issues were driving the MG petitions in all cases. Homelessness drove 9 of 11 cases. This is no different from the 84% of CHINS cases where neglect is the identified issue. Kinship MG families and CHINS families have the same needs, and comparable information, but legal or support services are not available to the group looking at MG.
- Consent forms differ depending on the locale of the Probate court but neither form used provides enough information to show whether it is informed (understood), or whether there is coercion. The new informed consent form as developed by the MG Legislative Study Committee still needs to be explained to insure that consent is informed and voluntary.
- Parental consents are not always filed with petitions despite “no parent objects” being listed as the legal grounds in the petition; the petitions are being accepted nevertheless.
- The parents uniformly did not understand what their consent meant or the consequences of giving up guardianship of their children. None of the parents the staff talked to made informed consent prior to signing the current consent forms. In these proceedings no one has the assigned responsibility to explain the legal consequences of their consent. This includes such things as parental loss of ReachUp. Some guardians do not apply for ReachUp to protect parents from child support orders. Parents in similar circumstances in CHINS proceedings where reunification is deemed likely within 6 months may receive continued ReachUp to facilitate reunification. The same opportunity is not offered parents in minor guardianships.

- There was no predictable approach by DCF to using MG vs using conditional custody to family member via a CHINS petition in the Family Court. DCF told families to use MG despite DCF Policy 85. The reasons behind the policy, i.e. to give autonomy to the guardian and avoid splitting of authority, are valid. When DCF continues to be involved, parents and guardians alike experienced confusion about the roles of DCF, the guardian, and the DCF service providers.
- The understanding of family members about their legal options improved significantly when provided in a family friendly, non-adversarial fashion. Staying neutral with the kinship triad was key to ongoing support requests because supports, not adversarial tactics, were provided. Supports are most helpful when the whole family can hear the same information and can work together to decide whether MG would be the best approach and what supports will be needed while the MG is in effect.
- Short term use of power of attorney (as in Tennessee) provides an interim, less formal, no court involved structure for short-term out of home placements. This should be considered by Vermont.
- No overall family plan was created. Most families are not ready at the pre-hearing stage to answer questions about:
 - How long the guardianship is intended to last;
 - Plan for parent/child contact;
 - Plan for what needs to happen for MG to end;
 - What supports needed for the MG to end;
 - How major decisions about children are going to be made.
- Judge in one case used project staff to work out issues in first 60 days. If a support structure is in place, a 60 day hearing could be an effective way for the family to get back to court and be prepared to lay out a family plan. Such a hearing will not work if no support infrastructure for the families is in place.

Proposals from the Project:

Families should have the right to choose the process: Families where non-emergency alternative out-of-home placement is under consideration should have greater involvement in determining which process to be used.

DCF should refer families at high risk of out of home placement to supportive organizations that offer legal education and peer support to inform families about the difference between the MG and CHINS process so families can choose which will best meet their needs: The efficacy and cost saving of legal education and specialized peer support have proven in other disciplines to achieve better outcomes. Both must be available so all parties can make informed decisions. This works equally well when families are considering a Minor Guardianships and when DCF contemplates filing a CHINS petition that could result in a kinship foster placement, non-kin foster care, conditional custody or permanency guardianship.

Legal Education is necessary in both MG and CHINS cases: The processes are very different and give different pathways to reunification and decreased time spent in out-of-home care. Legal educators help families understand the consequences of each and can serve as connectors to community based services.

Effective peer support is best delivered outside the DCF and DCF affiliated systems. It is relationship based, requires skilled staff with lived experiences, appropriate competencies and supervision.

Effective supports must be funded by the Legislature: Legal education and peer support are necessary components in the social service structure. As children and families are diverted from the formal child protection system better outcomes and reduced costs will result.

The Vermont Legislature should look at the Tennessee approach to Minor Guardianship and incorporate it into our process. Power of Attorney is a less onerous and more family driven tool to meet the needs of some families.

The Probate Court should replace the current informed consent form: Current informed consent form is inadequate. Two different forms are used and neither on its face shows that parents understand to which they are agreeing. The informed consent form proposed by the minor guardianship study committee should be adopted both by the legislature and the court. This should be done in conjunction with the creation of a robust peer support structure. This infrastructure will provide opportunities for the families to understand the roles and responsibilities of all parties. The State is saving \$38,000 per child per year for these families to avoid foster care. The savings can be applied to building the educational support and services for all at risk families.

Restructure ReachUp when reunification is the goal in MG: When MG is in effect ReachUp must be restructured so parents do not lose eligibility for ReachUp and Medicaid while they are actively engaged in reunification. (Same as when children are in DCF custody). Active engagement includes completion of the family care plan.

Probate Courts should be active participants in referring family members to the kinship supports and legal education: In counties where the Probate Courts partner with multi-generational kinship peer support families have opportunities to understand their options and access services which improve the possibilities for success. Multigenerational kinship peer support should be universally available to families at the time a petition is filed in Probate Court.

Respectfully submitted:

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