

## STATUTORY CHANGES

### 2013 Amendments

1. **Senate Enrolled Act No. 72** - The termination of parental rights statutes were amended to add provisions to Wyo. Stat. Ann. § 14-2-309(c) which allows a termination to proceed without a requirement of evidence that reasonable efforts have been made to preserve and reunify the family in cases where a court finds by clear and convincing evidence that certain events have occurred. The legislature added provisions relating to a parent being convicted of certain sexual abuse crimes against the child or another child of that parent and a provision relating to a parent being required to register as a sex offender for a certain type of offense against the child or another child of the parent.
2. **House Enrolled Act No. 112** - Various provisions of statutes relating to the department of family services were amended to repeal obsolete provisions relating to transportation of children, payments to facilities and placement of children at the Wyoming State Hospital and Wyoming Life Resource center; and, to update references to the food stamp program to change those references to the "supplemental nutrition assistance program".
3. **Senate Enrolled Act No. 11** - Amendments were made to the statutes relating to Community Juvenile Services allowing counties to be direct grant recipients of community juvenile services grants and modifying grant eligibility requirements.
4. **Senate Enrolled Act No. 74** - Amendments were made to the Adult Protective Services Act, allowing certain individuals access to adult protection investigation records
5. **Senate Enrolled Act No. 63** - Amendments were made to the Child Protective Services Act to amend requirements for investigations around verification of reports; and to the Adult Protective Services Act to clarify the standard of proof by a preponderance of the evidence.
6. **House Enrolled Act No. 15** - Amendments were made to the child support guidelines
7. **House Enrolled Act No. 16** - Amendments were made to Title 6, eliminating life sentences without parole for juvenile offenders and modifying provisions relating to life sentences for juvenile offenders generally.
8. **House Enrolled Act No. 65** - Amendments were made to various statutes relating to the Interstate Compact on Juveniles and providing for the appointment of the state public defender or a guardian ad litem to represent juveniles in accordance with the compact.

## CASE LAW

**1. In the Matter of the Adoption of AMP, 2012 WY 132, 286 P.3d 746** -This is an appeal of an adoption proceeding where a stepfather filed a petition to dispense with a biological father's consent to adoption and for step-parent adoption.

Issues: willful failure of obligation to support child and failure to bring support current after service of adoption petition.

Holding: The father argued that he did not willfully fail to pay child support and that he did not willfully fail to bring his support current within sixty days of service of the adoption petition.

The Court held that the district court did not err in determining that father willfully ignored his child support obligation and that he had failed to bring the support current within sixty days of being served with the petition to adopt, and therefore father's consent to adoption was not required. The Court further held that the adoption statute makes no reference to "willfulness" in conjunction with the obligation to make up arrearages within sixty days.

**2. In the Matter of the Termination of Parental Rights to SMH, 2012 WY 165, 290 P.3d 1104** - Appeal of a termination order.

Grounds for Termination 14-2-309(a)(iii) and (a)(v)

Issues: Whether the determination that mother was unfit to have the custody and control of her children was supported by clear and convincing evidence.

Holding: The case involved the termination of the parental rights of Mother to four of her children. Mother had a history of substance abuse, and was involved in a relationship with a man who also had substance abuse issues; there was domestic violence in the relationship; and the children had alleged abuse by Mother's boyfriend. Mother argued that her ability to care for her new baby without DFS assistance demonstrated that she was fit to care for her four older children. Mother also argued that DFS had not made reasonable efforts to rehabilitate her family

The Court determined that there was sufficient evidence to terminate Mother's parental rights under 14-2-309(a)(v). Mother conceded that her children had been in foster care over fifteen months, and further acknowledged at trial that she would not be capable of caring for her children if they were immediately returned to her. The Court found Mother's own testimony suggests that she was not able to meet the significant, ongoing needs of her children, but apart from Mother's concessions, found clear and convincing evidence that she is unfit to have the care and custody of the children. The Court found that Mother failed to make sufficient progress in treating her substance abuse problem, in that she initially failed to complete inpatient treatment and was incarcerated for meth use, eventually completed an inpatient treatment program 10

months after the children were initially placed in care, but then did not consistently participate in the recommended outpatient program. The Court deferred to the district court's determination as to the credibility of Mother. The Court further found the evidence of Mother's continued association with her boyfriend also demonstrated her unfitness, as her relationship and cohabitation with her boyfriend posed a direct risk of irreparable damage to the children, due to their reports of abuse, as well as Mother's failure to acknowledge the issues. Since Court found termination justified under 14-2-309(a)(v), need not consider whether termination was also warranted under 14-2-309(a)(iii).

**3. In the Matter of the Termination of Parental Rights to KAT, 2012 WY 150, 288 P.3d 1217 - Appeal of a termination order by both Mother and Father of one child**

Grounds as to Mother - 14-2-309(a)(iii) and (v); Grounds as to Father - 14-2-309(a)(iii), (iv) and (v);

Issues: Sufficiency of evidence of unfitness

Holding: With respect to Mother of three children, Court found DFS did present clear and convincing evidence to terminate Mother's rights under 14-2-309(a)(v). Court found it appropriate for district court to consider parent's history and pattern of behavior over time in determining whether rights should be terminated. Mother's history included marriage to a person who had previously been convicted of sexual abuse of his son from a prior relationship; Mother choose to remain in relationship after her children were born, even though relationship was abusive. Mother also participated in the sexual abuse of one of the children, and even after a divorce, continued to allow contact with the children, despite her knowledge of his history of abuse. Mother then established a relationship with MDS (Father of the youngest child) who then sexually abused her daughter. Mother continued to live with and support MDS, attempted to influence the child in question, testified on MDS' behalf at his criminal trial, and admitted to committing perjury at the trial in an attempt to help him. Mother failed to find safe and appropriate housing, failed to find employment to support the children. Her parenting skills never improved, despite assistance from DFS and other agencies. Mother knowingly and routinely put her children in harms way at the behest of others. Mother argued that she could now care for children as she has now aligned herself with agencies and professionals to help her provide the structure and support her children need. The Court repeated from earlier cases, that it would seem unreasonable and not for the best interests of the children that professional welfare workers should be furnished to care for the children in the parental home on a twenty four hour basis until the children can be self sufficient.

With respect to the termination of MDS, father of the youngest child, the Court found the record showed clear and convincing evidence that MDS was incarcerated due to a felony conviction and is unfit to have the care and custody of the child. MDS was convicted of sexual abuse of Mother's daughter, his child's half sister, and was serving two consecutive sentences of not less than 20 years nor more than 35 years.. The Court reiterated that the fact that MDS is incarcerated is not *per se* evidence of unfitness, but the incarceration is a reality that severely

impacts the parent child relationship and therefore cannot be ignored. The Court found that MDS would not be able to care for his child's ongoing physical, mental or emotional needs because he will be in prison for the child's entire childhood. The Court further found that the reason for MDS' incarceration was further evidence of his unfitness to care for his child. MDS asserted that there were no allegations that he abused his own child, but the Court determined that that distinction did not weigh in favor of showing he was a fit parent; that while his behavior may not have been physically directed at his son, it nonetheless affects him and illustrates MDS' "extreme moral delinquency" which graphically demonstrates that MDS is an unfit parent by any standard.

**4. IN THE INTEREST OF NC and AM, 2013 WY 2, 294 P.3d 866 - Neglect petition with respect to two Texas children who were brought to Wyoming by maternal grandmother**

Issues: Subject matter jurisdiction of juvenile court

Application of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Holding: Mother, living in Texas with her two children, reported to Grandmother that boyfriend was abusing the children. Mother eventually allowed Grandmother to take children to Wyoming. In Wyoming, Grandmother contacted DFS, who contacted local law enforcement. A juvenile abuse/neglect petition was filed. At the shelter care hearing a Texas attorney indicated to the juvenile court that some sort of custody proceeding was pending in Texas. Eventually the Mother and boyfriend moved to dismiss the juvenile proceedings in Wyoming for lack of jurisdiction because the alleged abuse occurred outside of Wyoming. The Motion was denied and adjudication occurred. The appeal challenged only the courts subject matter jurisdiction.

The Court applied the UCCJEA to the matter before them and expressly held that when a Wyoming court is presented with a child custody issue that implicates more than one state, the UCCJEA governs the Wyoming court's subject matter jurisdiction. The Court further held that the neglect proceeding was an interstate child custody proceeding, and the juvenile courts jurisdiction was governed by the UCCJEA. The Court further held that under the UCCJEA, in the case at hand, Texas, not Wyoming, is the home state of the children and Texas had exercised initial custody jurisdiction over the children. Finally the Court determined that the UCCJEA emergency jurisdiction provisions were applicable in that the children were present in Wyoming when the neglect petitions were filed and the children were at risk of mistreatment or abuse if they were returned to Texas. Emergency jurisdiction under the UCCJEA is temporary and limited, and does not include the authority to make permanent custody determinations. The Court concluded that the juvenile courts exercise of jurisdiction and it's orders were not in conformity with the UCCJEA's requirements and limitations, to the extent that those orders went beyond addressing the immediate emergency before the court. The Court affirmed the orders finding the children were abused and that Mother failed to protect the children from that abuse, and affirmed the order of protective custody based on those findings, but vacated the remainder

of the orders, including the formal adjudication order. The Court then remanded for entry of orders that comply with the UCCJEA, and required the juvenile court to contact the Texas court that had concurrent jurisdiction, and thereafter issue amended protective custody orders.

**5. IN THE MATTER OF THE GUARDIANSHIP OF LNP, 2013 WY 20, 294 P.3d 904**  
- Grandparents petitioned for permanent guardianship

Issue: Whether notice of proceeding was required under the Indian Child Welfare Act (ICWA).

Qualified expert witness under ICWA

Holding: Court determined that Mother's petition to vacate the temporary guardianship triggered the notice requirement of ICWA where Mother asserted that child was an Indian child, thus giving the district court "reason to know" that the child was an Indian child, and found that the district court erred by failing to require adequate notice be provided to the Cherokee Nation prior to the guardianship hearing. However, the Court found the deficient notice was subject to review for harmless error and determined Mother suffered no harm because of the error. The Court detailed the actions of the district court in determining that notice was required, ordering the grandparents to provide notice and leaving the record open to allow for further evidence once notice was provided. The Court held that the determination of whether a witness qualifies as an expert is vested within the discretion of the trial court. The Court further noted that neither ICWA, nor the BIA Guidelines require a qualified expert to possess expertise in tribal customs. Special knowledge of Indian life is not necessary where a professional person has substantial education and experience and testifies on matters not implicating cultural bias. Court determined there was sufficient evidence to support the likelihood of serious emotional or physical damage to the child should she be returned to the parents.

**6. IN THE INTEREST OF MC, HC and CC, 2013 WY 43, 299 P.3d 75** - Appeal of adjudication of neglect.

Issues: Sufficiency of the evidence

Denial of due process

Holding: On the day of the adjudication trial, Mother filed a motion to dismiss a juvenile neglect action or in the alternative strike witnesses, alleging failure to comply with Rule 3 of the Rules of Procedure for Juvenile Courts, contending the State failed to timely provide exculpatory evidence consisting of a negative UA on the child, and also contending the State failed to provide a witness list before the hearing. The juvenile court denied the motion.

The Court found that Rule 3 provides for what is commonly called self-executing discovery similar to that available in civil actions, and that Rule 3(b)(1) unequivocally requires the State to provide the respondent to a neglect petition all information which tends to negate that person's involvement in the charged offense, and Rule 3(b)(3) requires the State to provide a list of witness. The Court further found that Rule 3(f) allows the parties to file a motion to compel if

discovery is not furnished as required, and gives the juvenile court broad discretion in crafting a remedy for a discovery violation. The Court found no valid reason that a witness list was never provided. The Court noted that it had previously assumed without deciding that Rule 3 is to be interpreted in light of Brady and under appropriate circumstances, Brady due process principles may apply in parental termination proceedings. The Court noted that in criminal cases convictions may be reversed when exculpatory evidence is suppressed by agents of the state, whether innocently or in bad faith. The Court specifically stated that the rules should be followed unless otherwise stipulated or ordered by the trial court.

The Court determined that the omission of the witness list would have been apparent well before the hearing and that Mother had a number of options, including filing a motion to compel, or requesting a continuance, rather than waiting until the day of the adjudication to seek dismissal. The Court held that Mother had a number of options to address any prejudice claimed to have resulted from the discovery issues, and because those motions were never made, the trial court had no opportunity to address the problems Mother now claims have arisen. Under the circumstances the juvenile court did not abuse its discretion in declining to dismiss the case. The Court also determined Mother failed to establish that she did not receive a fundamentally fair trial, and held due process requires a fair trial, not a perfect one.

The Court further held that the juvenile court had sufficient evidence of an unsanitary and unkempt home to support a finding of neglect, and that there was sufficient evidence to connect Mother's use of marijuana to her failure or refusal to provide adequate care for her children, and that the trial court could reasonably conclude that it is neglectful to expose a 12 yr old child to the use of marijuana to the extent that he is knowledgeable as to its effects and able to find it in the home.

**7. IN THE INTEREST OF SWM, 2013 WY 49, 299 P.3d 673 - juvenile delinquency case**

Issues: Violation of due process rights in determination that juvenile was competent to proceed to adjudication

Holding: SWM was 12 years old at the time that a juvenile delinquency petition was filed against him. His counsel filed a motion to suspend the proceedings for evaluation under Wyo. Stat. §7-11-303 and §14-6-219, based on counsel's concerns about SWM's understanding of the proceedings. The motion was granted, an evaluation completed and filed with the juvenile court. The examiner provided an opinion that SWM was not suffering from mental illness or intellectual disability to a degree rendering him subject to involuntary commitment, and deemed him competent to proceed in juvenile court, under Wyo. Stat. §14-6-219. The examiner also stated, pursuant to Wyo. Stat. §7-11-303 that to a reasonable degree of psychological certainty that SWM did not have sufficient present capacity to comprehend his position, to understand the nature and object of the proceedings against him, to conduct his defense in a rational manner and to cooperate with counsel. With time and formal education, SWM might be expected to attain these capacities in his late teens or early twenties. The State moved to strike the portions of the evaluation that were conducted pursuant to Wyo. Stat. §7-11-303 as being beyond the scope of the Juvenile Justice Act. The juvenile court granted the motion, and determined not to consider

that portion of the evaluation dealing with SWM's competency to stand trial as an adult criminal defendant.

The Supreme Court held that the Wyoming Juvenile Justice Act and their decisions recognize that children in juvenile court have due process rights, and that the rights are of little value to a juvenile if he is incompetent to exercise those rights, and further held that a juvenile has a due process right not to proceed with the adjudication of his delinquent status unless he is competent. The Court further held that Wyo. Stat. §7-11-302 and to some extent §7-11-303 should be applied in delinquency proceedings. The Court held that certain of the W.R.Cr.P. may apply in delinquency proceedings unless inconsistent with the Juvenile Justice Act, and determined that W.R.Cr.P. 12(c) is not inconsistent with the Juvenile Justice Act and the rule expressly incorporates the above statutes. Finally, the Court held that the competency standards should be applied in light of juvenile rather than adult norms. When evaluating the competency of a child in juvenile proceedings, it is appropriate to consider the juvenile's age, experience, education, background, intelligence and capacity to understand. Because the Court found that the juvenile court did not use the correct standards in evaluating the juvenile's competency, the decision was reversed and remanded.

**8. IN THE INTEREST OF MF**, 2013 WY 104, 308 P.3d 854 - Appeal of CHINs juvenile court order.

Issues: Whether a juvenile court Child in Need of Supervision (CHINs) order must terminate when the child turns 17

Holding: MF argued that the juvenile court exceeded its authority in a CHINs proceeding when the juvenile court ordered that MF remain under the jurisdiction of the court past the age of 17. After a second petition to revoke probation, four months before his 17th birthday, the juvenile court revoked MF's probation, placed him in a residential treatment facility and ordered that he remain on probation until his 18th birthday.

The Supreme Court held that the statutory language of Wyo. Stat. §14-6-431(b) to be clear and unambiguous in its requirement that all CHINS orders must terminate when the adjudicated child reaches the age of seventeen. The Court further held that the second sentence of §14-6-431(b) clearly and unambiguously allows DFS to provide continuing services on a case by case basis despite the termination of the governing CHINS order, but found that unless DFS has continuing legal custody of the minor pursuant to a non-CHINS order or some other authority, its ability to provide the case by case services would depend on DFS' willingness to provide the services and the minor's willingness to accept them.

**9. JB v. STATE OF WYOMING**, 2013 WY 85, 305 P.3d 1137 - Juvenile charged as adult filed motion to transfer proceedings to juvenile court.

Issues: Who has the burden of persuasion in a transfer hearing

Holding: The minor was charged as an adult with nine felonies. He was fifteen at the time of the crimes. He filed a motion to transfer the proceedings to juvenile court, which was denied by the district court.

The Supreme Court held that the district court erred in failing to assign the burden of persuasion to the State to establish that the case should not be transferred to juvenile court. The Court distinguished the burden of producing evidence from the burden of persuasion.

**10 and 11. IN THE MATTER OF THE ATTORNEY FEES AND COSTS IN THE TERMINATION OF PARENTAL RIGHTS TO NRF, 2013 WY 9, 294 P.3d 879; IN THE MATTER OF THE ATTORNEY FEES AND COSTS IN THE TERMINATION OF PARENTAL RIGHTS TO KMO, 2013 WY 113, 309 P.3d 827 - Appeal by attorney as to amount of attorney fees awarded for termination of parental rights case.**

Issues: Whether the district court abused its discretion in reducing the amount of attorney fees sought.

Holding: The cases are two appeals that were filed by an attorney appointed to represent a parent in a termination of parental rights case. Both cases were jury trials. After parental rights were terminated, the attorney filed a motion for payment of fees. In both cases the motion was filed over a year after the order terminating parental rights was entered. In both cases, the amount awarded was substantially lower than the amount sought by the attorney - in the NRF case, the amount sought was 48,717.00 and the amount awarded was \$24,358.50, a fifty percent reduction. In the KMO case, the amount sought was \$121,530.00 and the amount awarded was \$25, 000.00

The Supreme Court held that the district court correctly applied the lodestar test and considered two factors (1) whether the fee charged represents the product of reasonable hours times a reasonable rate; and (2) whether other factors of discretionary application should be considered to adjust the fee upward or downward. In both cases, the hourly rate of \$100.00 per hour was deemed to be a reasonable rate for the termination action. The Court then discussed the reasonableness of the hours billed. In doing so, the Court held that an attorney must show that he has exercised billing judgment, which the Court stated is usually shown by the attorney writing off unproductive, excessive or redundant hours. The Court held that the attorney in question had failed to exercise billing judgment in numerous areas, and that in such a situation the district court has the discretion to reduce by a reasonable percentage the number of hours claimed. The Court held that the district court in each of the cases did not abuse its discretion in reducing the amount of fees.

**12. ADOPTIVE COUPLE V. BABY GIRL** -570 U.S. \_\_\_\_ (2013) Adoptive couple appeal dismissal of adoption petition and placement with biological father under Indian Child Welfare Act.

Issues: Application of various portions of ICWA to an adoption proceeding

Holding: Biological mother gave up baby for adoption. Biological father was member of Cherokee tribe. Adoptive parents gave notice to biological father of the adoption and he appeared and contested the adoption. The lower court applied ICWA to the proceeding, denied the adoption petition and gave custody to biological father. The US Supreme Court reversed, holding that neither §1912(d) and §1912(f) bars the termination of biological fathers parental rights. The Court held that the term "continued custody" in §1912(f) plainly refers to a pre-existing state, and refers to custody that a parent already has or had at some point in time in the past. Because biological father, under the laws of Oklahoma, where the child was born, and South Carolina, where the adoption proceeding was filed, never had legal or physical custody of the child, the Court determined that biological father could not invoke §1912(f), which requires a heightened showing that serious harm to the child is likely to result from the parent's continued custody of the child.

The Court further held that §1912(d) which requires active efforts have been made to prevent the breakup of the Indian family was also not applicable where the parent abandoned the child before birth and never had custody of the child, again determining that the word "breakup" refers to the discontinuance of a relationship and finding that in this particular case there was no relationship to be discontinued.