

Reasonable Efforts To Prevent Removal

At a shelter care (detention) hearing the judge learns that a child was removed from parental care by law enforcement because of abuse and neglect. The judge approves the removal stating that reasonable efforts were not possible because of an emergency.

Of course the judge had to approve the removal. It was an emergency. However, that “removal” was not what the federal and state statutes are addressing when they mandate the agency must provide reasonable efforts to prevent removal. This emergency removal without reasonable efforts does not obviate the court’s obligation to make a finding whether the agency provided reasonable efforts to prevent removal. That will happen later during the first 60 days of the case should the judge decide that removal is necessary.

Let’s start with the law. Code of Federal Regulations Section 1356(b)(1)(i) reads as follows:

- (1) Judicial determination of reasonable efforts to prevent a child’s removal from the home.
- (i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

This regulation indicates that the ‘reasonable efforts to prevent removal’ finding must be made within 60 days from the date the child was removed. When the judge makes a ruling at a subsequent hearing within the first 60 day or at the disposition, then the judge must make a finding whether reasonable efforts to prevent removal were made by the agency. That order reflects a different type of removal. It reflects what the agency has done since the emergency occurred to prevent removal from parental care. This distinction between the two types of removal has not been well developed in the law, and there are very few cases in the appellate reports that discuss reasonable efforts to prevent removal.¹

Just because a child is removed in an emergency situation and the court rules that reasonable efforts to prevent removal were not possible because of the emergency, does not end the obligation of the agency to provide services to prevent removal – for the next 60 days. This fact puts a burden on the attorneys and the court to discuss reasonable efforts to prevent removal early in the case, perhaps at an interim hearing during the first 60 days after removal and certainly at the disposition.

A final note: a finding that the agency did not provide reasonable efforts to prevent removal does not mean that the child is returned to the parents immediately. The only result of the ‘no reasonable efforts’ finding is that the agency will be financially punished for not providing reasonable efforts.

Endnotes

- 1 *In re Ashley F.*, 225 Cal. App. 4th 803 (2014); *In the Matter of Milagros, M.A.*, 26 Misc.3d 580, 889 N.Y.S. 2d 437 (N.Y. Slip Op. 229458, 2009); see Edwards, L., *Reasonable Efforts: A Judicial Perspective*, at pp. 35-38.



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