

Reframing the Conversation: Using Kinship Legal Guardianship in DYFS Cases

Introduction

Every year, about 6,000 children in New Jersey are removed from their homes because of abuse or neglect.¹ Most are eventually returned to their homes. For those children who cannot be returned to their parents, the Division of Youth and Family Services (DYFS) is obligated to find them another permanent home. Historically, adoption has been the goal in these situations. In 2002, another option to achieve permanency became available to resolve DYFS litigation cases: kinship legal guardianship (KLG).²

The use of KLG to resolve DYFS court cases grew from 19 in 2002 to 2,547 in July 2007.³ While discussions with stakeholders throughout the state indicate that the use of KLG has decreased in the last two years, there were 2,524 children in subsidized KLG placements at the end of fiscal year 2008.⁴ There is much debate regarding its use. When should KLG be used? Is it being used too much? Not enough? Is the KLG arrangement in the best interest of the child or the parent? Debate is helpful when implementing a new law and process. The dialogue helps educate us all and keeps the process honest.

At the Children's Legal Resource Center of the Association for Children of New Jersey (ACNJ), staff respond to many questions about DYFS policies from caretakers of children, some of whom are related to the children and others not. An increasing number of callers have questions about KLG and adoption. Many are confused by information they receive and by the actions of some attorneys, caseworkers and judges. We have learned a lot from these conversations.

A training grant provided ACNJ with an opportunity to visit many family court vicinages and talk with stakeholders about the implementation of KLG. Asked by one vicinage to provide research on outcomes of both adoption and legal guardianship, we learned more. This article examines the current debate and the research. It sets out what ACNJ thinks are the important elements to cover in conversations with both relative and non-relative foster parents, now called "resource parents," about permanency for children living in foster care.

The case practice model currently being implemented by DYFS contemplates a family team approach to

decision-making and engagement of the family in the decision-making process.⁵ Given the fact that DYFS is ultimately responsible for the health and safety of a child in its care, the question at the heart of the debate is how much weight the wishes of the family, in particular the preference of the kin caregiver, should carry in the final placement decision when reunification is no longer the goal.

ACNJ believes for the reasons stated in this legal bulletin that federal and state laws reflect a hierarchy to achieving permanency for children living in foster care. Reunification with a parent is almost always the initial goal when a child enters foster care. If reunification cannot happen, adoption is preferred over legal guardianship, and legal guardianship is preferred over an alternative permanent placement or the child continuing to languish in foster care. This is the legal framework through which the conversation with the resource parent about the child’s permanent plan should begin.

The conversation should include information about the research, the law, the needs of that specific child, and all the facts of the individual case. Those involved in the case need to recognize that each case is unique. What is appropriate for one child, may not be appropriate for another, even within the same family. To some extent the needs of the caregiver who has agreed to assume responsibility for the child impact the decision as well. Although a caregiver related to the parent of a child may want to factor in the needs of that parent, DYFS and the court should be focused on the health, safety and permanency needs of the child.

Why is Permanency Important?

Children need consistent nurturing from a dependable and committed caregiver to ensure that they grow into successful adults. The quality of the parent-child bond can profoundly affect the relationships children have with all other people in their lives. A secure attachment reflects “the warmth and trust of early caregiver-child relationships. It provides a foundation for positive relationships with peers and teachers, healthy self-concept, and emotional and moral understanding.”⁶ Attachment and trust are necessary for children to adjust socially, and to

develop empathy as well as the cognitive and behavioral skills necessary for successful functioning later in life.⁷ “For any child, a stable relationship provides the structure they need to learn coping skills, adapt to change and sooth themselves when they are distressed.”⁸

Achieving permanency is especially important for children in foster care because they have lacked this consistent, permanent caregiver-child relationship.

[C]hildren in foster care have often experienced family instability and other types of maltreatment that compromise their healthy development. However, providing safe, stable, and nurturing homes for these children may lessen the harmful effects of their experience by exposing them to protective factors that can promote resilience.⁹

Children left for extended periods of time in foster care rarely experience the world as safe and predictable. The repeated experience of separation and loss resulting from moving through a succession of foster homes before reaching a permanent home increases the risk that a child will develop serious behavioral and/or emotional difficulties. And so the goal for children living in foster care is to find a permanent home that gives them a sense of family stability, safety and security which most children experience.¹⁰

The laws governing abuse and neglect cases in New Jersey and all other states are based upon this concept of **permanency**, the idea that children need predictability and healthy, secure attachments to succeed later in life.¹¹ They need to know

who will care for, care about and be there for them during good times and bad....In children’s terms, permanence means knowing where they will be for their next birthday, the next holiday, next summer vacation. Mostly, it means they do not have to worry about being moved and moved....¹²

Background

Permanency Defined in Federal Law

It is common to cite the *Adoption and Safe Families Act of 1997*¹³ (ASFA) as the law that focused child welfare systems on achieving timely permanency for children living in foster care. But in New Jersey, the emphasis on permanency began in 1978 with the enactment of the *Child Placement Review Act*.¹⁴ Two years later the federal *Adoption Assistance and Child Welfare Act of 1980*, (AACWA)¹⁵ seeking to prevent children from languishing in foster care, established timetables for reviewing placements, and provided federal money to move children who could not be reunified with their parents toward adoption.¹⁶

Between 1984 and 1994, the number of children entering foster care grew by 70 percent to an estimated 468,000.¹⁷ When Congress was considering ASFA, our nation’s child welfare system was in crisis. Great concern was expressed about the need to expedite permanency decisions for more than 100,000 children lingering in foster care without permanent homes.¹⁸ According to a literature review by the Evan B. Donaldson Institute in 2004, the consensus of experts in the mid-1990s “suggested adoption was more fiscally sound, more stable and better for children than foster care or long-term guardianship.”¹⁹ Several experts recommended improving adoption practice and promoting adoption over foster care or long-term guardianship.²⁰

ASFA re-emphasized the importance of timely permanency for children, shortening the timeframes within which the child’s permanency goal must be identified and achieved. It required that proceedings initiating termination of parental rights begin once a child has been in foster care for 15 of the previous 22 months. Although the law allowed exceptions to filing for termination of parental rights, including placing the child with a relative, “[s]ubsequent ASFA regulations emphasized that these exceptions could be invoked only on a case-by-case basis and that permanency efforts had to be continued, even when such exceptions were invoked for termination of parental rights.”²¹

ASFA provided financial incentives for states to increase the number of adoptions from foster care. Long-term foster care was eliminated as a permanent placement²² “[T]he preamble to the ASFA regulations explained that ‘[f]ar too many children are given the permanency goal of long-term foster care, which is not a permanent living situation for a child.’”²³

Relative or kinship care was formally recognized and as in AACWA, legal guardianship identified as a permanency option,²⁴ but no money was appropriated for legal guardianship subsidies.²⁵ Arguably this was because adoption remained the preferred permanency option when reunification with a parent was not possible. Instead the federal government allocated funds for waiver demonstration projects, including subsidized legal guardianship programs.²⁶

Any remaining question regarding the preference for adoption over legal guardianship was resolved by the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (Fostering Connections) signed into law by former President Bush on October 7, 2008. While the law permits states to claim federal funds for kinship guardianship payments to relatives who are committed to providing a permanent home for a child leaving foster care, the law specifically requires the state agency to determine that “being returned home or adopted are not appropriate permanency options for the child” before making the claim for federal dollars.²⁷

The law deems a child eligible for a kinship guardianship assistance payment under this subsection if the State agency determines the following:

- (i) The child has been--
 - (I) removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and
 - (II) eligible for foster care maintenance payments under section 472 while residing for at least 6 consecutive months in the home of the prospective relative guardian.

(ii) **Being returned home or adopted are not appropriate permanency options for the child. [emphasis added]**

(iii) The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.

(iv) With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.²⁸

New Jersey Courts on Legal Permanency

New Jersey, like other states, incorporated ASFA into state statute and will have to comply with Fostering Connections. Even before these federal laws, New Jersey courts emphasized the importance of permanency for children who cannot be reunited with their parents.

If one thing is clear, it is that the child deeply needs association with a nurturing adult. Since it seems generally agreed that permanence itself is an important part of that nurture, a court must carefully weigh that aspect of the child’s life.²⁹

In *The Matter of the Guardianship of J.C., J.C., and J.M.C., Minors*, the Court acknowledged “the paramount need [that] children have for permanent and defined parent-child relationships.”³⁰ “Children have an essential and overriding interest in stability and permanency.”³¹ The Supreme Court in *The Matter of the Guardianship of K.H.O.* acknowledged “New Jersey’s strong public policy in favor of permanency,” in particular reunification or adoption over long-term foster care.³² ⁱ

ⁱ It should be noted that at the time of these court decisions the choice was between adoption and remaining in foster care to give a parent more time to rehabilitate. A long-term foster care agreement was available in very limited circumstances and viewed as an exception to the general rule favoring adoption. State child protective service agencies like DYFS were just beginning to increase their use of relative homes as licensed foster homes, and the use of legal guardianship arrangements was just beginning.

Permanency Defined in State Statutes and Regulations

The goal of **legal permanency** governs DYFS in three ways. **Family preservation** policies require that DYFS attempt to keep the family unit together by offering services to strengthen the family.³³ As of the end of 2008, 38,317 children were receiving services from DYFS in their own homes.³⁴ When the child’s safety in the home cannot be ensured, DYFS must remove the child. The health and safety of the child is paramount.³⁵

Once children enter foster care, there is a hierarchy in the steps towards permanency. The initial goal mandated by law in almost all cases is to return the child to a biological parent, or **family reunification**. DYFS has a legal obligation to offer services and to work with the parents to address the problems that resulted in the child being placed into foster care, i.e. provide “reasonable efforts.”³⁶

If the child cannot be safely returned to a parent in a timely manner, the Division must find **another permanent plan** for that child.³⁷

When a child cannot safely return home, adoption is the preferred legal permanency option. Adoption gives the child a sense of belonging to a stable family and offers the child physical and emotional security that lasts a lifetime. Adoption is the most immune from future legal attack and ends state oversight over the case.³⁸

If adoption is ruled out, the law requires that the Division consider other legally permanent arrangements such as legal guardianship.

Subsidized guardianship allows children to maintain their family and community roots when they can no longer live with their parents and adoption is not an appropriate option for the children.³⁹

New Jersey’s kinship legal guardianship falls into this category. It is less permanent than adoption but more permanent than custody or the child remaining in foster care indefinitely. Unlike adoption, the legal guardianship relationship is not

binding for a lifetime; rather the guardian retains the continuing legal right and responsibility to care for the child until the child reaches age 18 or finishes high school, whichever event occurs later.⁴⁰ KLG judgments can be vacated through a petition to the court to seek to return the child to the parent, or if the KLG is no longer in the child's best interests.⁴¹ This can include situations in which the guardian is seeking to return children to DYFS' custody.

If adoption and kinship legal guardianship are determined not to be an appropriate permanency plan for the child, then DYFS must develop another planned permanent living arrangement, defined by ASFA as "any permanent living arrangement not enumerated in the statute."⁴²

In light of these policies, laws and court decisions, when a child cannot be safely reunified with a parent, the first preference is adoption. Adoption is the most permanent legal option, providing the child with the highest level of legal and emotional security, a new *forever family*. ACNJ has always been an advocate for adoptive homes for children who cannot be reunified with their parents because they need family; a nurturing, consistent parent to raise them and be there for them even as an adult. The research and the law clearly support this position as a policy matter. However ACNJ also believes that each case must be decided on its own facts; permanency plans should reflect the best interests of the individual child.

The New Jersey Kinship Experience

While kin have often served as alternate or supplementary caregivers when birth parents were unable to care for their children, relatives were very rarely formally designated as foster parents for related children. Although DYFS policy always permitted relatives to become licensed foster parents and thus receive subsidies, prior to the reform plan of 2004⁴³ this did not occur unless the relative affirmatively sought to become a licensed foster parent. DYFS made a commitment in its reform plans to place more children with relatives and current practice presumes that relatives receive the subsidy and become licensed resource parents. As of December 31, 2008, 37 percent of children living in foster care were in kinship homes.⁴⁴

Many children not involved with DYFS are raised by relatives or other close family friends, i.e. "kin". In New Jersey in 2006, 53,859 children were being raised by their grandparents.⁴⁵ Most of these families are not involved with DYFS. These living arrangements exist for different reasons; employment, financial, parents having mental health issues or substance abuse problems. Some parents leave their child in the physical custody of a relative for a short time; others indefinitely. Relatives who have physical custody and/or legal custody of a child, when DYFS is not involved, can seek child support from the parents, or can obtain the child-only grant through a county board of social services. Some caregivers are able cover the child through their own private health insurance; others apply for New Jersey Medicaid, now included as part of NJ FamilyCare.

The relationship between the relative caregiver and the parent impacts the well-being of the child. In many instances all parties are in agreement with the arrangement and the child grows up in a stable secure home. However, if the relationship between the relative and the parent is problematic or if a custody order is contested by the parent on a regular basis, even if unsuccessful, the child may experience confusion and uncertainty about where he/she belongs. Continuous litigation can be disruptive to a child, even if the child is not directly involved. It was the uncertainty of these private custody situations which ACNJ and other advocates sought to address through the kinship legal guardianship statute which took effect January 1, 2002.

The statute legally recognized arrangements wherein children are **already** living with relatives or close family friends because of their parents' unavailability or long-term inability to parent. In the vast majority of cases, DYFS was not involved with the family. In these situations, the statute provided stronger legal protection to the caregiver who had become the consistent nurturing "parent" to the child and stability for the child living in that home. KLG is more than custody.⁴⁶

Provisions in the KLG Law Specific to DYFS Cases

When the wording of the kinship legal guardianship law was being formulated in 2001, there were concerns about using KLG in cases where other legal obligations upon DYFS come into play.

Reasonable Efforts

One concern was that the KLG statute not be used as means for DYFS to avoid meeting its legal obligation to provide services to parents to rectify the problems that caused the placement and help reunify the child with the parents. For that reason, the KLG statute requires the judge to make a finding that reasonable efforts exercised by DYFS were either unsuccessful or unnecessary under the statute.⁴⁷

Adoption is Neither Feasible nor Likely

The other issue concerns the obligation of the Division to ensure permanency for any child who comes under DYFS care due to abuse or neglect. The Division is ultimately responsible to ensure the health, safety and permanency for any child living in foster care.⁴⁸ While the parent may support KLG as the permanency plan, only DYFS and the court have the legal standing to seek a KLG arrangement.⁴⁹ The parent does not have legal standing to formally request kinship legal guardianship as a disposition in a Title 9 or Title 30 proceeding.

The limitations placed by the Legislature on the use of kinship legal guardianship arrangements as a permanency option reflect the clear preference in the law for adoption as the primary permanency alternative for children who cannot be reunified with birth parents.⁵⁰ For a KLG judgment to be used to resolve a DYFS litigation case, the judge must find that "adoption of the child is neither feasible nor likely."⁵¹

The meaning of that phrase, **adoption is neither feasible nor likely** is at the center of the current debate. Who makes the determination? The caregiver? What authority, if any, does DYFS have to remove a child from a caregiver if the caregiver is not willing to adopt? Does "feasible" mean that the child is not adoptable in any home or is it referring only to the home the child is

currently living in? Is the length of time the child has lived there a factor? Does the age of the child matter? New Jersey regulation requires that DYFS "[determine] that the child cannot be returned to his or her parent and that adoption is neither likely nor feasible" prior to a child becoming eligible for the DYFS Legal Guardianship Subsidy Program.⁵²

The safety of the child must be paramount, and steps must be taken to ensure permanency and minimize disruptions. Other permanency options, such as safe return to birth family or adoption, should be seriously considered before subsidized guardianship is selected, in order to rule out other possible placement alternatives and to minimize the possibility of later disruption of the guardian arrangement.⁵³

Recent Court Decisions Provide Some Answers

The Appellate Division first considered kinship legal guardianship in *New Jersey Division of Youth and Family Services v. S.V.*⁵⁴ Reviewing the provisions of the kinship legal guardianship statute and the legislative intent and findings, the Appellate Court concluded that kinship legal guardianship was created to meet a very specific need.⁵⁵

In our view, this newly-enacted statute is not intended as an equally available alternative to termination that must be considered in order to satisfy the third element of *N.J.S.A.* 30:4C-15.1. Rather, as DYFS has argued in its brief, it is an intended option where parental neglect and poor prospects for change in the foreseeable future are established, but adoption 'is neither feasible nor likely,' the child is in the care of 'a family friend or a person with a biological or legal relationship with the child,' *N.J.S.A.* 3B:12A-2, and therefore 'kinship legal guardianship is in the child's best interest.' *N.J.S.A.* 3B:12A-6d(4). Here adoption is both feasible and likely, making kinship guardianship inappropriate.⁵⁶

In *New Jersey Division of Youth and Family Services v. P.P. and S.P.*, the New Jersey Supreme Court held that “when permanency provided by adoption is available, kinship legal guardianship cannot be used as a defense to termination of parental rights under *N.J.S.A. 30:4C-15.1a(3)*.”⁵⁷ The Supreme Court indicated in its opinion in *P.P.* that on its face KLG was not meant to be a substitute for the permanency of adoption but rather to provide as much permanency as possible when adoption is not feasible, rather than the child remaining in foster care.

The plain language of the Act, as well as its legislative history, establish kinship legal guardianship as a more permanent option than foster care when adoption ‘is neither feasible nor likely’ and ‘kinship legal guardianship is in the child’s best interest.’⁵⁸

In *New Jersey Division of Youth and Family Services v. S.F.*, the Appellate Court held that DYFS proved by clear and convincing evidence that adoption was not feasible nor likely because the paternal grandparents, although committed to raising their grandsons, were not willing to adopt.⁵⁹ The father had consented to awarding KLG to his parents.

In a subsequent case, although DYFS had approved a maternal grandmother to adopt her granddaughter,⁶⁰ the grandmother decided that she did not want to adopt, but wanted to become the KLG.⁶¹ DYFS changed the plan to select-home adoption (adoption by strangers) and the case was appealed. The Appellate Division in *Division of Youth and Family Services v. DH and JV*, held that KLG was an appropriate permanency plan under the facts of the case, and select-home adoption was not in the child’s best interests.⁶² The maternal grandmother had custody of the 5-year-old child for most of her life, was willing to raise her granddaughter and removal of the child from her grandmother’s home “would only cause her emotional and psychological harm.”⁶³

In *New Jersey Division of Youth and Family Services v. E.P.*,⁶⁴ the Supreme Court again correctly stated the hierarchy of permanency options when it wrote that “a court may appoint a

kinship legal guardian when adoption of the child is neither ‘feasible [n]or likely,’ thus preserving the parental relationship, citing *N.J. Div. of Youth & Family Servs. v. P.P.*, 180 N.J. 494, 510 (2004).⁶⁵ The Supreme Court reminded us that “[t]he ‘good’ done to a child in [termination of parental right] cases in which reunification is improbable is permanent placement with a loving family, which after all is the principal goal of our foster care system.”⁶⁶

However, in *E. P.*, no one was available to serve as a kinship legal guardian, and the permanency goal was select-home adoption. The thirteen-year-old had been in numerous foster homes and her “only enduring bond [was] with her mother.”⁶⁷ Given the unique circumstances of the case, the Court held that this child’s relationship with her mother which continued to provide emotional sustenance “should not have been severed based upon the unlikely promise of a permanent adoptive home.”⁶⁸

The Conversation with Resource Parentsⁱⁱ

The Current Conversation Leaves Some Caregivers Confused

ACNJ receives telephone calls and emails from resource parents, both relatives and non-relatives, with questions about the DYFS court process. They are often confused by this complicated process. Some ask about the differences in financial supports to families through adoption and KLG. Information regarding what both adoption and KLG provide with regards to their legal authority and responsibility for the child is given. Resource parents seem to think they are supposed to “pick” an option and are not sure what to do.

Many of these families feel pressure from all sides. From a DYFS caseworker they may hear that if they do not adopt, the child will be removed from their home. They may be advised by the parent’s attorney to refuse to adopt and tell the judge they will only become a KLG. We recognize that while the conversations between

ⁱⁱ The term “resource parent” includes all licensed foster parents, both relatives and non-relatives.

resource parents and DYFS staff and between resource parents and the attorneys are more extensive than this, this is what some relatives take away from the discussion. It also reflects the competing interests of the parties involved in the litigation.

The use of KLG to resolve DYFS court cases increased from 19 in 2002 to 2,547 in July 2007.⁶⁹ Some argue that DYFS promoted KLG as a permanency plan because it was expedient when DYFS was trying to reduce caseloads. The past two years have shown a significant drop, which suggests that DYFS has rethought its use of KLG. At the same time, however, parents' attorneys rightly try to retain some legal rights and hope for parents who have recognized their inability to parent their children for the foreseeable future, but who do not want to forfeit their rights to their children forever.

Some caregivers are caught in the middle, which is not fair to the caregiver, and does not benefit the children involved. Caregivers may pursue a less permanent option for the child to end the case, which may not be what is best long-term. We think some more conversation is needed in these cases.

All involved in a case should carefully examine the particular facts of that case and help the caregiver make an informed choice that is best for the child in their care. The caregiver needs to fully appreciate the long-term consequences of their decision. The caregiver's informed choice should then become part of the permanency planning.

The Child's Individual Needs and Safety Concerns Must be Part of the Conversation

While families and children may have similar characteristics, every case is different, every family is different. Every child is unique, with individual needs based upon his or her personality and temperament, living circumstances, current age, age when entered foster care, placement history, medical needs, educational needs and relationships with siblings and family members. Permanency plans must take into consideration these unique characteristics and needs.

There are situations in which the DYFS caseworker will and should tell a caregiver that they think the parent is a danger to the child and that DYFS thinks that the parent's rights should be terminated. DYFS is doing its job of protecting the health and safety of the child. In that context the caseworker is appropriately asking the relative if she will adopt when DYFS seeks guardianship.

There are also times when through the licensing process DYFS learns something about the caregiver which gives DYFS concern or makes it inappropriate for the caregiver to raise the child. Some relatives are not capable of meeting the special needs of a particular child. These concerns should be addressed early and decisions made quickly, not 12, 18 or 24 months later. It is DYFS' job to protect and ensure the well-being of the child in its custody. Attention should then turn to finding another home for the child.

The Conversation Should Include the Research Adoption

A considerable body of research supports the preference for adoption when reunification with a parent is not possible.⁷⁰ Child welfare experts have concluded that "of all the placement possibilities for children, adoption is the least likely to fail. In other words, the adoption alternative is least likely to result in the child being moved after placement or adoption."⁷¹

Following the passage of *The Adoption Assistance and Child Welfare Act of 1980 (AACWA)*, adoptions of children from foster care were finalized at increasing rates causing concern by some that a growing incidence of adoption dissolutions would follow. Researchers studied the validity of that prediction,⁷² finding that "termination rates after AACWA were not as high as child welfare professionals had feared."⁷³

The Evan B. Donaldson Adoption Institute completed a literature review of 20 years of relevant social science research and conducted a survey of 15 states' information-collection capabilities, issuing a report in 2004. The report concluded that while data collection is inadequate and the definitions of what constitutes an adoption disruption, displacement or dissolution are

inconsistent, the vast majority of adoptions from foster care remain stable over time.⁷⁴

In general, the study found that "termination rates for adoption are much lower than those for long-term foster care."⁷⁵ The Donaldson study defined "adoption termination" as adoption instability and includes adoption disruption, displacement and dissolution.⁷⁶

"Adoption disruption" is defined as the "termination of a placement before the adoption is legally finalized."⁷⁷ Studies from 1980 to the mid-1990s found overall disruption rates of 10 percent to 27 percent; for younger children, rates were about 3.3 percent or less.⁷⁸ A 2002 report by the U.S. Government Accounting Office (GAO) on disruption data from 21 states estimated 5 percent of adoptions planned in 1999-2000 did not occur. Rates have remained fairly consistent since 1980s.⁷⁹

"Adoption displacement" is the temporary (short- or long-term) return of a child to state custody after adoption is legally finalized.⁸⁰ Empirical research studies estimated displacement rates in the 2 percent to 8 percent range. The rate may vary depending on whether studies include all displacements or only long-term displacement.⁸¹ The GAO survey of states found that "of adoptions planned in 1999-2000, approximately 1% resulted in re-entry into foster care."⁸²

"Adoption dissolution" in the Donaldson study is defined as the termination of an adoption after it is legally finalized.⁸³ Data is not readily available because children's last names change after adoption. The researchers reported that terminated adoptions often take the form of long-term displacements, rather than legal dissolution. "[T]he best estimate is that less than 2% of adoptive placements dissolve after finalization."⁸⁴

According to the Donaldson literature review, empirical studies document specific child- and parent-related factors posing greater risk to adoption stability. They argue that knowledge of these risks can promote more effective matching and attention to those known risks.⁸⁵ For example, age at time of placement is generally cited as the greatest challenge to stability.⁸⁶

Behavioral and emotional issues that have little to do with age are important indicators of termination risk because they put stress on adoptive placements. The parent's expectations may be unrealistic (due in part to lack of information from the agency) and experience in parenting special needs children.⁸⁷ So in addition to careful matching and preparation before placement,⁸⁸ post-adoption services are vital to reducing termination risk.

The Donaldson study reported mixed research results on kinship adoptive placements. Kin adoptions are reported as more likely to have "highly positive outcomes" than adoptions by families unrelated to the child. Reasons for this outcome may be that these children have fewer factors predictive of termination risk. These children tend to have fewer moves while living in foster care, and a lower number of incidents of physical and sexual abuse. Relatives are more likely to know important aspects of child's background and attachment problems are less common.⁸⁹ After kin adoptions, the next most secure are foster home adoptions. The most problematic are "matched adoptive parents", i.e. the state agency is finding a family other than the foster family to adopt the child.⁹⁰ In New Jersey these placements are called "select-home" adoptions.

Another study reported a 50 percent disruption rate among 875 potentially permanent relative placements and identified the following reasons:

inability of relatives to maintain appropriate boundaries around contact with birth parents, difficulty of children from long-term substance abusing families adapting to a more structured environment, children's psychological and behavioral problems, and relatives' advanced age and poor health, as well as unmet service needs.⁹¹

Kinship Care

National research on kinship care has identified advantages and disadvantages to placing children with relatives. Children in kinship care, regardless of age, experience fewer placements than those in non-kinship care. Stability in placement generally

results in better outcomes for all children living in out-of-home care.⁹² If the child knows the relative, placement with kin “[may] help lessen separation trauma, sense of loss, and identity conflicts that sometimes develop when children are adopted, particularly if they are old enough to remember their parents...”⁹³

Living with kin is generally not considered unusual or stigmatizing. Children in formal kinship care placements are less likely to run away and more likely to have contact with parents and siblings.⁹⁴ Birth parents may still be involved in their children's rearing.⁹⁵

There are disadvantages. Kinship placements may decrease the possibility of birth parent reunification. When children are placed in kinship care, parents are typically able to visit or call as much as they want. This can reduce their motivation to become their child's primary caregiver again. Kinship caregivers note that “birth parents are happy to have their freedom back and to pass along the responsibilities of parenthood.”⁹⁶

Kinship care placements also carry risks. A relative could be part of the family dysfunction that necessitated removal of the child. The child may not be sufficiently protected in the kinship home⁹⁷ or the child's new caregiver may have similar problems as the offending parent.⁹⁸

Another issue is the lack of preparedness among some kinship foster homes. Unlike licensed resource families, who typically prepare for their new role as parents, kinship caregivers often fall into parenthood in response to a family emergency. In addition, the age and socioeconomic circumstances of kinship caregivers may impede their ability to provide high-quality care.⁹⁹ Almost all studies that have collected data on the income of kinship foster caregivers have found that they are older, of worse health and significantly poorer than non-kin foster parents.¹⁰⁰

Family stressors that undermine the stability of these living arrangements include conflicts with biological parents, challenging behaviors and special needs of children and adolescents, and health limitations of relative caregivers.¹⁰¹

With so much conflicting evidence on the benefits versus risks of placing children with kin, a recent study “sought to estimate the association between placement into kinship care and the likelihood of behavioral problems after 18 and 36 months in out-of-home care.”¹⁰² Children placed into kinship care had fewer behavioral problems 3 years after placement than children who were placed into foster care. Although the authors of the study indicated that there should be further research to confirm and elaborate on these findings, “the finding supports efforts to maximize placement of children with willing and available kin when they enter out-of-home care.”¹⁰³

While kinship care is a viable option “it is important to recognize that kinship care is not an unconditional safety net.”¹⁰⁴ Kinship care placements do disrupt. Some research suggests that rates of disruption may be “sensitive to both the level of financial support and the availability of postdischarge services to families.”¹⁰⁵

New Jersey law requires DYFS to search for and assess relatives if children come into foster care.¹⁰⁶ This law is good public policy based on solid research that generally shows children do better when placed with family. However all children who are removed from their parents' homes do not belong with their relatives. The research is just as clear about the negatives of relative placements. Each case needs to be assessed based on its own facts.

The largest randomized controlled trial of subsidized guardianship for child abuse and neglect cases was done in Illinois as part of a federal waiver demonstration project.¹⁰⁷ Mark F. Testa, Ph.D., from the Children and Family Research Center at the University of Illinois at Urbana-Champaign coordinated the Illinois project and has reported some interesting findings. In the Illinois study both the caregiver and the child viewed the placement as permanent. The findings of that study are

that the intentions of caregivers to raise a foster child to adulthood do not differ for families who can choose between adoption and guardianship as compared to families who can select only

adoption. Also, children do not express any lesser sense of belonging in families that adopt or become guardians as compared to families that only adopt. Finally, the homes of guardians are no more likely to disband than the homes of caregivers who can only become adoptive parents.¹⁰⁸

From the first five years of the project, "the rates of guardianship ruptures [were] similar to adoption ruptures, controlling for differing ages at entry."¹⁰⁹ In his most recent report, Dr. Testa wrote that "[g]uardianships are more likely to displace but not because guardianships are less permanent. The kinds of children and caregivers that select guardianship are more prone to displacement regardless of whether they stay in foster care or become adopted."¹¹⁰

Dr. Testa is of the opinion that most families are in the best position to determine whether adoption or guardianship best fits their particular circumstances.¹¹¹ ACNJ would add, provided the family is fully informed about all options and understands the consequences of each.

The Illinois waiver project included one group of caregivers that were given the option of adoption only, and another that were give the option of adoption or subsidized guardianship. The availability of subsidized guardianship reduced the average time that children spent in foster care. However "follow-up studies suggested that as many as two-thirds of the children taken into legal guardianship might have eventually been adopted in the absence of the waiver."¹¹²

In May 2008, Dr. Testa examined the interim findings from subsidized demonstration projects in Wisconsin and Tennessee. The Wisconsin demonstration project was operating for two years at the time of the report and the project in Tennessee for one year. At that time the two waiver demonstrations were showing similar results to the Illinois demonstration project, i.e. that "federally subsidized guardianship is a permanent and cost effective alternative to retaining children in long-term foster care."¹¹³

The Conversation Should Be Ongoing and Focus on *Best Interests* of the Particular Child

The permanency decision is not a single conversation between the caregiver and the DYFS caseworker. There should be an ongoing dialogue over time, during which the caregivers are asked questions about their household and future plans. They should be given information regarding what permanency means for children in foster care and details about different legal arrangements and what each means for the child and the caregiver. Caregivers need to process the information over time in the context of their family's dynamics and needs. The financial support for each option must be made clear.

ACNJ receives calls from relatives who in hindsight wish they had made a different decision. They did not expect their arrangement to continue this long. They thought the parent would be better by now. The caregiver wants to be enjoying retirement, or the caregiver is disabled and the child's behavior is having a negative impact on the caregiver's health. They want to give the child back. We also receive calls from kinship guardians who now want to adopt. They called DYFS and were told there is nothing to litigate so DYFS cannot help them now. They have to file for adoption privately and do not know how to proceed or what is required.

There are questions which must be answered and will help the conversation. Alice Nadelman, Ph.D., participated in ACNJ's training project. Dr. Nadelman is a licensed clinical psychologist in both New Jersey and New York and has provided therapy and expert consultation in DYFS cases for over 25 years. She identified four areas of inquiry which can assist DYFS and other stakeholders in determining the appropriate permanency plan for a child who cannot be safely reunified with a parent.

The first is **safety**. Does the parent present any physical or emotional danger to the child if continued contact were required? The second is **attachment**. With whom is the child's primary attachment or identification? Will the child accept adoption? **Uncertainty** is the third area. Can the child tolerate uncertainty regarding the possible loss of the current caregiver in the future if the

parent were to seek to vacate the KLG? Could the child cope with another round of evaluations to assess best interests? Does the child wish to return to the parent? The answers should include consideration of the child's age, developmental state and any special needs. And finally, the fourth area is **cooperation**. Can the caregiver and parent work together cooperatively for the best interest of the child? Does the caregiver value and respect the child's need for positive family identity? Does the parent accept and respect the caregiver's authority?¹¹⁴

Questions Related to the Caregiver's Future Plans

One of the first inquiries should address visits. Everyone may be getting along now because DYFS is facilitating the visits and the court is monitoring. The caregiver may get along with her relative who is the child's parent, but how does the caregiver get along with the other parent and the other parent's relatives? If one parent is currently in jail or not around, what will happen when that parent returns? Some caregivers do not understand that both parents retain their right to visit and that the caregiver will have to work out the logistics and transportation with the parents once the court enters the final judgment.

Where does the caregiver plan to be five years from now? Will she/he still be working or retired? If retired, will the caregiver remain in New Jersey or move out of state? In *Division of Youth and Family Services v. T.M.*,¹¹⁵ the Appellate Court held that a kinship legal guardian wishing to relocate out of state is similar to a custodial parent moving out of New Jersey.¹¹⁶ The noncustodial parent remaining in New Jersey is entitled to have the court determine whether the kinship guardian has proven that there was a good faith reason for the move and that the move will not be harmful to the best interests of the child.¹¹⁷

Some caregivers fail to understand that an adoption does not prohibit contact between the birth parent and the child. The adopting parent can allow contact between child and birth parent. The adoptive parent becomes the decision maker.

Questions About the Relationship Between Caregiver and Parents

The caregiver needs to ask what problem caused the child to be placed into her home? Is the parent getting help for that problem? Is the caregiver expecting her relative, the child's parent, to get better and then to return custody back to the parent? What if that does not happen? If the problem is related to drugs or alcohol, what happens when the parent relapses, understanding that relapse is part of rehabilitation. Everyone may be getting along now, but what happens when the parent and the caregiver do not get along. Does the parent interfere with the caregiver's parenting decisions? How does the caregiver handle that interference?

Some caregivers do not understand that with a KLG arrangement, the parent can later seek to vacate the judgment and have custody returned to them. Presently pending before the New Jersey Supreme Court is a case involving which party has the burden of proving that the circumstances which resulted in the KLG judgment have changed and that the KLG order should be vacated.¹¹⁸

Questions about the Child

The conversation should also include questions about the child's age, school grade, and whether there are any medical, educational or behavioral problems. Are those problems being addressed? How? Is progress being made? How does the problem impact the caregiver and other family members? Is the caregiver currently struggling to meet the child's needs? Does she understand that the needs of a child change over time? Does the parent understand these problems?

*Questions About Financial Supports*¹¹⁹

Many questions involve financial issues. The legal arrangement between the caregiver and the child determines the financial supports. Financial supports available through adoption have until recently been more generous than those available to kinship legal guardians. DYFS has added more supports for KLGs and the Fostering Connections law provides federal dollars for those supports.¹²⁰ With adoption there are special services available, such as post-adoption counseling and respite care.

Relative KLGs may also qualify for help from New Jersey’s *Kinship Navigator Program*, once the DYFS case is closed. Unlike adoptions, there is no tax credit for KLG. Many teens who are adopted or in a KLG arrangement are eligible for our state’s Foster Care Scholars Program.¹²¹

Conclusion

The decision regarding the most appropriate permanency plan for the child for whom reunification with a parent is not possible should be made once all parties are fully informed about the options and have considered the long-term implications of each alternative within the individual family’s dynamics. Kinship caregivers should have a complete understanding of what each choice means for the child and themselves. There are some clear and some subtle differences between adoption and KLG that caregivers may not fully understand and which some DYFS staff, attorneys and judges may not fully appreciate or explain in a timely fashion.

While the use of KLG will most certainly continue to be litigated in New Jersey, hopefully there will also be more dialogue in each case about permanency options and what is appropriate for the particular child. Recent research suggests the form of legal permanence – adoption or guardianship – “may have less effect on family stability than does the caregiver’s relationship to the child, sense of family duty, affection, and length of acquaintance.”¹²² And it needs to be acknowledged that much of the adoption research was completed prior to regular use of subsidized legal guardianship.

Clearly no one wants children to linger in foster care. Data from the New Jersey Administrative Office of the Courts (AOC) indicate that as of January 2009 there are 1,586 children living in foster care whose parents’ rights have been terminated still waiting for permanent homes.¹²³ Some of these cases are on appeal and many of these of these children will ultimately be adopted by their current caregivers. Credit is due to all working with these cases who have diligently tried to significantly reduce this number over the past several years.

Judges are appropriately sensitive to terminating parents’ rights when the DYFS permanency plan is to find an adoptive home for the child (select-home adoption) and there is a relative willing to become the child’s legal guardian, especially when the child is older.¹²⁴

On the other hand, DYFS is successful in finalizing adoptions for younger children in foster care. And DYFS has a legitimate concern that guardians not return children to state care when the parent does not seek reunification as anticipated by the relative caregiver or when children become problematic teenagers. KLG should not replace long-term foster care. Although some argue that long-term foster care is appropriate for some children, there were valid policy reasons for eliminating long-term foster care as a permanency option.

Arguably a good “match” of child and caregiver does more to ensure the permanency of the relationship than a court order defining its status. A longitudinal study of both adoption placements and KLG placements in New Jersey would provide an opportunity for all to learn more and better serve the children entrusted in the state’s care.

The availability of subsidized legal guardianship provides an opportunity to provide a permanent family for children living in foster care who might otherwise not find a permanent home. KLG should be used with great care, and after there has been a thorough discussion about adoption.

Please send your comments and questions to this bulletin’s author, Mary E. Coogan, Esq. at mcoogan@acnj.org.

Special thanks to NJ ARCH for providing some of the research materials for this article. www.njarch.org

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¹ In 2006, 6,677 children entered out-of-home care; in 2007 5,862 children entered out-of-home care.

http://www.state.nj.us/dcf/home/childdata/outcome/ChapinEntryVExitDYFSOOHPlemt02-07_04.16.09.pdf, last visited April 21, 2009.

² *Kinship Legal Guardianship Act*, N.J.S.A. 3B:12A-1 *et. seq.* and N.J.S.A. 30:4C-84 *et. seq.*

³ "Child Protection Data Report" at pages 2 and 15 citing data from NJ Administrative Office of the Courts (ACNJ 2007); Chart reflecting Number of Children Receiving Adoption and KLG Subsidy Payments in 2007, <http://www.state.nj.us/dcf/home/childdata/outcome/AdoptionKLGJan06-Jun07RAWbymonth.pdf>, last visited April 27, 2009.

⁴ http://www.state.nj.us/dcf/home/childdata/outcome/SubsidizedKLG02-08_03.03.09.pdf, last visited April 21, 2009.

⁵ <http://www.state.nj.us/dcf/about/case/DCFCasePracticeModelJan2007.pdf>, last visited March 30, 2009.

⁶ Thompson, Ross A., "Development in the First Years of Life," 11:1 *Future of Children* 21, 26 (2001).

⁷ Nadelman, Ph.D., Alice, Powerpoint presentation entitled "Permanency: What it is and what it means for children in foster care" based upon research of John Bowlby and Mary Ainsworth (June 19, 2008) available at www.kidlaw.org; see also JoAnne Solchany, and Lisa Pilnik, "Healthy Attachment for Very Young Children in Foster Care," Vol. 27, No. 6 *Child Law Practice* 81 (American Bar Association, August 2008).

⁸ Solchany and Pilnik, *supra*, fn. 7 at 90.

⁹ Harden, Brenda Jones, "Safety and Stability for Foster Children: A Developmental Perspective" 14, Number 1 *The Future of Children* 31, 36 (Winter 2004)

¹⁰ Nadelman, *supra*, fn. 7.

¹¹ Solchany and Pilnik at 90.

¹² Nadelman, *supra*, fn. 7.

¹³ *Adoption and Safe Families Act of 1997*, Public Law 105-89.

¹⁴ N.J.S.A. 30:4C-50 *et. seq.*

¹⁵ *Adoption Assistance and Child Welfare Act of 1980*, Public Law 96-272.

¹⁶ Allen, MaryLee Allen and Mary Bissell, "Safety and Stability for Foster Children: The Policy Context," 14, Number 1 *The Future of Children* 49, 50-51, 72 (The David and Lucile Packard Foundation, Winter 2004); "What's Working for Children: A Policy Study of Adoption Stability and Termination," (Evan B. Donaldson Adoption Institute, 2004).

¹⁷ Freundlich, Madelyn, "The Future of Adoption for Children in Foster Care: Demographics in a Changing Socio-Political Environment" at page 2 citing the Congressional Research Service, 1997, (The Evan B. Donaldson Adoption Institute); see also "When Children Cannot Return Home: Adoption and

Guardianship", Mark F. Testa, Ph.D. reporting that that "By the early 1990s, more than 500,000 children were in foster care – the highest number ever recorded up to that time." Volume 14, Number 1 *The Future of Children* 115, 116 ((The David and Lucile Packard Foundation 2004).

¹⁸ Allen and Bissell at 62.

¹⁹ "What's Working for Children: A Policy Study of Adoption Stability and Termination," (Evan B. Donaldson Adoption Institute, 2004) at 8 [hereinafter referred to as the Donaldson Study].

²⁰ *Id.* citing Richard Barth and Marianne Berry.

²¹ Allen and Bissell. at 53 citing 45 C.F.R. § 1356.21(d).

²² *Id.* at 54.

²³ Renne, Jennifer, "Reasonable Efforts to Finalize A Permanency Plan for 'Another Planned Permanent Living Arrangement'" 21, No. 3 *Child Law Practice* 33, 38 citing 65 Fed. Reg. 4036 (January 25, 2000) (American Bar Association, May 2002).

²⁴ Allen at 54; Cecelia Fiermonte, "Reasonable Efforts to Finalize a Permanency Plan for Relative Placement" 21 No. 1 *Child Law Practice* 1 (American Bar Association March 2002) citing 42 U.S.C. §675 (c), 45 C.F.R. §1365.21 (h); Mark F. Testa, Ph.D., "Symposium: The State Construction of Families: Foster Care, Termination of Parental Rights, and Adoption: The Quality of Permanence – Lasting or Binding? Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption" 12 *Va. J. Soc. Pol'y & L.* 499, 504-07(2005).

²⁵ Testa, *supra*, fn. 24 at 504.

²⁶ *Id.* at 507. All subsidized waivers made rule-out of both reunification and adoption as pre-condition for approving guardianship assistance agreement. *Id.* at 508. Testa argues that ASFA did not establish adoption as presumptive best placement for children who cannot be reunited with their birth parents. ACNJ disagrees with this analysis.

²⁷ "New Help for Children Raised by Grandparents and Other Relatives: Questions and Answers About the Fostering Connections to Success and Increasing Adoptions Act of 2008" Center for Law and Social Policy, Children's Defense Fund, Alliance for Children and Families/United Neighborhood Centers of America, *et.al.* at pages 33-39 (January 2009).

²⁸ P.L.110-351 §101(d)(3)(A); 122 STAT 3949, 3951.

²⁹ *New Jersey Division of Youth and Family Services v. A.W.*, 103 N.J. 591, 610 (1986).

³⁰ 129 N.J. 1, 26 (1992); See also *In the Matter of the Guardianship of K.H.O.*, 161 N.J. 337, 357-58 (1999).

³¹ *J.C.* at 26.

³² *K.H.O.* at 357.

³³ N.J.S.A. 9:6-8.8b(2).

³⁴www.state.nj.us/dcf/home/childdata/dyfsdemo/index.html (last visited January 1, 2009).

³⁵ N.J.S.A. 9:6.8-8.

³⁶ N.J.S.A. 9:6.8-8b(2); N.J.S.A. 30:4C-11.

³⁷ N.J.S.A. 9:6-8.8(4).

³⁸ Renne, Jennifer, "Reasonable Efforts to Finalize A Permanency Plan for Adoption" 20 No. 6 *Child Law Practice* 65, (American Bar Association August 2001).

³⁹ Bissell, Mary and Miller, Jennifer L., Editors, "Using Subsidized Guardianship to Improve Outcomes for Children," at page 1 (Children's Defense Fund and Cornerstone Consulting Group 2004): CDF did a national survey in 2003, finding that 34 states and District of Columbia had subsidized guardianship programs. "All states required a trained child welfare caseworker to determine whether subsidized guardianship is the best option for the child.... The majority of states also required that the supervising agency consider the possibility of safe reunification with the birth parents or adoption before subsidized guardianship is chosen as a viable permanency option." *Id.* at 3-6; Under federal law *legal guardianship* "means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term 'legal guardian' means the caretaker in such a relationship." *ASFA, Public Law 105-89 Sec 101(b), 42 U.S.C. 675(7)*.

⁴⁰ N.J.S.A. 3B:12A-4a(6).

⁴¹ N.J.S.A. 3B:12A-6(f).

⁴² Renne, *supra*, fn 23 at page 33 citing 42 U.S.C. 475(5)(C); N.J.S.A. 9:6-8.8(3).

⁴³ "A New Beginning: The Future of Child Welfare in New Jersey" James M. Davy, Commissioner (2004).

⁴⁴ http://www.state.nj.us/dcf/home/childdata/dyfsdemo/ChildrenInPlcmtTYPEDec08_01_30_09.pdf (actual number is 3,250) (last visited April 21, 2009).

⁴⁵ New Jersey Kids Count 2008 (ACNJ 2008).

⁴⁶ N.J.S.A. 3B:12A-1c, Legislative findings.

⁴⁷ N.J.S.A. 3B:12A-6d(3)(a).

⁴⁸ N.J.S.A. 9:6-8.8b.

⁴⁹ N.J.S.A. 30:4C-87a.

⁵⁰ N.J.S.A. 3B:12A-1b, Legislative findings.

⁵¹ N.J.S.A. 3B:12A-6d(3)(b).

⁵² N.J.A.C. 10:132A-1.6(b)4. (December 1, 2008).

⁵³ Bissell and Miller, *supra*, fn 39 at 5.

⁵⁴ *New Jersey Division of Youth and Family Services v. S.V.*, 362 *N.J. Super.* 76 (App. Div. 2003).

⁵⁵ *Id.* at 86 (App. Div. 2003).

⁵⁶ *Id.* at 88.

⁵⁷ *New Jersey Division of Youth and Families Services v. P.P. and S.P.*, 180 N.J. 494, 513 (2004).

⁵⁸ *Id.* at 512.

⁵⁹ *New Jersey Division of Youth and Family Services v. S.F.* 329 *N.J. Super.* 201, 213 (App. Div. 2007).

⁶⁰ *Division of Youth and Family Services v. D.H. and J.V.*, 392 *N.J. Super.* 333, 343 (App. Div. 2008).

⁶¹ *Id.* at 342.

⁶² *Id.* 335 and 338.

⁶³ *Id.* at 343.

⁶⁴ *New Jersey Division of Youth and Family Services v. E.P.*, (A-112/113-06 decided July 14, 2008)

⁶⁵ *Id.* at 22.

⁶⁶ *Id.* at 26.

⁶⁷ *Id.* at 27.

⁶⁸ *Id.* at 34.

⁶⁹ *Child Protection Data Report* at pages 2 and 15 citing data from NJ Administrative Office of the Courts (ACNJ 2007).

⁷⁰ Donaldson Study; Sandt, "No Adoption, No Permanence — A Conversation with Professor Richard Barth," 16, No 3 *Child Law Practice* (American Bar Association, May 1997).

⁷¹ Gelles, Richard J. and Ira Schwartz, "Children and the Child Welfare System," 2:1 *U. Pa. Journal of Constitutional Law* 95, 106 (Dec. 1999) citing Richard Barth.

⁷² Donaldson Study at 4 and 7.

⁷³ *Id.*

⁷⁴ *Id.* at 3 and 11.

⁷⁵ *Id.* at 8 citing Barth and Miller, Richard Barth and John Triseliotis.

⁷⁶ *Id.* at 7.

⁷⁷ *Id.* at 7.

⁷⁸ *Id.* at 9.

⁷⁹ *Id.*

⁸⁰ *Id.* at 7.

⁸¹ *Id.* at 10 citing Testa 2004 report on AFCAR data.

⁸² *Id.*

⁸³ *Id.* at 7.

⁸⁴ *Id.* at 10-11 citing studies by Groze (1996) and Festinger (2001); Donaldson also reports GAO research gathered from 21 states found that about 1% of adoptions finalized in 1999 to 2000 later resulted in legal dissolution, citing General Accounting Office report at pp. 22-23 (2002)

⁸⁵ *Id.* at 6.

⁸⁶ Controlling for other factors, children ages 5-9 were almost twice as likely to experience disruption than children under age 1. Children ages 10-14 were more than 5 times as likely to experience disruption than children under age 1. Children ages 15 or older were nine times more likely to experience disruption than children under age 1. Donaldson Study at 12 citing numerous reports.

⁸⁷ Donaldson Study at 13-14.

⁸⁸*Id.* at 37 citing Berry (1997), McRoy (1999) and Barth interview (1992)

⁸⁹Donaldson Study at 19-20 citing Howard and Smith, 2001.

⁹⁰*Id.* at 19 citing Testa 2004.

⁹¹*Id.* at 20 citing Terling-Watt, 2001.

⁹²Rubin, David, MD, MSCE; Kevin Downes, MD; Amanada L. R. O'Reilly, MPH; Robin Mekonnen, MSW; Xianqun Luan, MS; Russell Localio, PhD, "Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care", 162 (NO.6) ARCH PEDIATR ADOLESC MED/BOL 550 (American Medical Association June 2008) downloaded from www.ARCHPEDIATRICS.COM on September 19, 2008.

⁹³ Testa, Mark F. "When Children Cannot Return Home: Adoption and Guardianship", Volume 14, Number 1 *The Future of Children* 115, 121 (The David and Lucile Packard Foundation 2004).

⁹⁴*Id.*, Gleeson, James P., "Kinship Care Research and Literature: Lessons Learned and Directions for Future Research", 2, Number 2 *Kinship Reporter* 1, 10 (Child Welfare League of America, Summer 2007).

⁹⁵Testa, *supra*, fn. 92 at 121.

⁹⁶Geen, Rob. "Finding Permanent Homes for Foster Children: Issues Raised by Kinship Care". Series A, No. A-60 at 2-3 (*The Urban Institute* April 2003).

⁹⁷ Fiermonte, Cecelia, "Reasonable Efforts to Finalize a Permanency Plan for Relative Placement", Vol. 21, No.1 *Child Law Practice*, 1, 7-8 (American Bar Association, March 2002); Rubin *et al*, *supra*, fn 91 at 551.

⁹⁸ Rubin *et al*, *supra*, fn. 91 at 551.

⁹⁹ *Id.*; Gleeson, James P., "Kinship Care Research and Literature: Lessons Learned and Directions for Future Research", Volume 1, Number 2 *Kinship Reporter* 1 (Child Welfare League of America, Summer 2007)

¹⁰⁰ Berrick, Jill Duerr. "Assessing Quality of Care in Kinship and Foster Family Care", *Family Relations* Vol. 46, No. 3 (Jul. 1997): 273-280.

¹⁰¹Gleeson, *supra*, fn. 98 at 8.

¹⁰² Rubin *et al*, *supra*, fn. 91 at 551.

¹⁰³*Id.* at 550.

¹⁰⁴Testa, *supra*, fn. 92 at 124.

¹⁰⁵*Id.* citing a study in Texas showing disruption levels as high as 50 percent when children in foster care were discharged to custody of kin. Texas did not have subsidized guardianship program and provided few services. Contrast this with the subsidized guardianship program in Illinois where only 3.5 percent of 6,820 children placed with kin were no longer living there five years later. Of the disrupted placements, records indicated that one-third of the guardian ruptures were attributable to the death or incapacitation of the

guardian and two-thirds occurred because the caregiver no longer wanted to exercise parental authority.

¹⁰⁶ N.J.S.A. 30:4C-12.1.

¹⁰⁷ Testa, Ph.D., Mark F, "Subsidized Guardianship: Testing The Effectiveness Of An Idea Whose Time Has Finally Come," at page 1, *Children and Family Research Center*, (The University of Illinois at Urbana-Champaign, May 2008).

¹⁰⁸Testa, Ph.D., Mark F., "Symposium: The State Construction of Families: Foster Care, Termination of Parental Rights, and Adoption: The Quality of Permanence – Lasting or Binding? Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption", 12 *Va. J. Soc. Pol'y & L.* 499, 533.

¹⁰⁹Testa, *supra*, fn 92 at 124. Starting in 1997 6,820 children entered subsidized guardianship in Illinois waiver demonstration project. As of March 2002 only 3.5 percent of those children had been moved.

Approximately one-third had been moved because the guardian had died or become incapacitated. The other two-thirds had been moved "because the caregiver no longer wanted to exercise parental authority." In these latter cases, the guardianship was legally dissolved.

¹¹⁰Testa, *supra*, fn 106 at 24.

¹¹¹Testa, *supra*, fn. 107 at 534.

¹¹²Testa, *supra*, fn. 106 at 3.

¹¹³Testa, *supra*, fn. 106 at 4 and 24.

¹¹⁴Alice Nadelman developed a list of questions for caregiver(s), parent(s), and the child which may be helpful. These can be found at www.kidlaw.org.

¹¹⁵*New Jersey Division of Youth and Family Services v. T.M.*, 399 N.J. Super. 453 (App. Div. 2008).

¹¹⁶*Id.* at 466.

¹¹⁷*Id.* at 468 citing *Baures v. Lewis*, 167 N.J. 91, 118 (2001).

¹¹⁸*New Jersey Division of Youth and Family Services v. L.L.*, A-2459-07T4, unpublished slip opinion (App. Div. October 17, 2008).

¹¹⁹ See materials at www.kidlaw.org for details.

¹²⁰ Details regarding subsidies and other financial benefits applicable to adoption and KLG are available at www.kidlaw.org.

¹²¹ Details regarding eligibility for NJFC Scholars Program can be found at www.safsonline.org.

¹²² CWLA Kinship Reporter - Gleeson at page 9

¹²³ "The Legal Orphan Report" (Post-TPR Cases), Administrative Office of the Courts (January 18, 2009).

¹²⁴ *E.P.*, *supra*, fn. 63 at 11-12 where Court's opinion reflected testimony of a DYFS adoption specialist "that it could take two to three years to find a placement for an older child through 'select home adoption'".