

CHAPTER 9
DISPOSITION

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9.1. GENERALLY

Disposition is the heart of the Juvenile Court Child Protection process. If the court assumes jurisdiction over the child (and, incidentally, his family), disposition determines what rehabilitative steps ought to be taken to correct the conditions which caused the child to become a ward of the court. Hopefully, the conditions will be corrected so that the child may be reunited with the parents and full parental rights restored. The purpose of the dispositional hearing¹:

A dispositional hearing is conducted to determine what measures the court will take with respect to the child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that one or more of the statutory grounds alleged in the petition are true.

9.2. TIME IS OF THE ESSENCE

The law imposes time limits on the rehabilitation process as a means of balancing the interests of the child in stability and permanence against the parents' interests in regaining custody. Within 12 months after the child is removed from his or her home, if a child remains in foster care and parental rights to the child have not been terminated, a permanency planning hearing must be held, in which the preferred result is return of the child to the parent's custody.² If the child cannot be returned to the parent's care at that time, however, then termination of parental rights must be seriously considered, opening the option of adoption. Other permanent placement for the child out of the biological home includes legal guardianship, placement with a fit and willing relative, or emancipation.³ The benevolent and rehabilitative ideal of the child protection process is nowhere felt so clearly as at disposition.

Even though the court does not formally consider disposition until after adjudication, the parties should consider appropriate disposition from the very beginning of the court case -- at first appearance in court or even before. Disposition and the case plan should be an important topic of negotiation. Certain elements of the case plan, such as parenting time, counseling, drug treatment, etc. can begin even before formal court adjudication -- if the parties agree.

¹. MCR 3.973(A); MCL 712A.6; *Family Independence Agency v Bowman (In re CR)*, 250 Mich.App. 185, 202-203 (2002).

². MCL 712A.19a(1)

³. MCR 3.976(A)

The Child Protection Proceedings are regarded as one single continuous proceeding.⁴ Once a case enters the dispositional phase, any subsequently filed petition that alleges new instances of abuse or neglect does not create an entirely new case that requires the court to redetermine jurisdiction and afford the respondent the right to a jury trial.⁵

9.3. CASE PLANS REQUIRED WITHIN 30 DAYS OF PLACEMENT; PARTICIPATION VOLUNTARY

Families seem the most receptive to social work assistance and the most able to benefit from outside intervention at the point of crisis or soon afterward. Effective social work intervention with families is, therefore, sometimes in conflict with the requirements of due process. In an effort to harmonize due process concerns with the need for prompt and supportive services for families in apparent dysfunction, Michigan law requires development of an Initial Case Service Plan within 30 days of a child's placement, and that parties be informed of the elements of the case plan; however, participation in the Initial Services Plan is entirely voluntary before the entry of a court order.⁶ Thus, on a case-by-case basis, parents, with advice and assistance of counsel, can determine whether they will participate in the plan before adjudication. Generally, it will be in their interests to do so -- but when they disagree with the elements of the plan or are unwilling to engage in the services recommended by the Department, they may decline to participate.

The general elements of an Initial Service Plan include⁷:

- (i) the background of the child and the family;
- (ii) an evaluation of the experiences and problems of the child;
- (iii) a projection of the expected length of stay in foster care; and
- (iv) an identification of specific goals and projected time frames for meeting the goals.

The Initial Service Plan identifies specific services the family should participate in to correct the problems that brought the child under the jurisdiction of the court.

By the time a case gets formally to the dispositional stage, therefore, the family may already be engaged in some of the steps intended to correct the conditions which caused the child to come under the jurisdiction of the court.

⁴. *In re LaFlure*, 48 Mich.App. 377, 391 (1973); *In re Sharpe*, 68 Mich.App. 619, 626 (1976)

⁵. *In re Miller*, 178 Mich.App. 684 (1989)

⁶. MCL 712A.13a(8); MCR 3.965(E)(1) & (2)

⁷. MCR 3.965(E)(3)(a), (b), (c), and (d)

9.4. TIME AND NOTICE

When a child is in placement, the interval, if any between trial and the first dispositional hearing may not be more than 28 days, except for good cause. When the child is not in placement, the interval (if any) is within the discretion of the court.⁸

Unless the disposition is held immediately following trial, notice of the hearing must be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920.⁹ The court rule does not require the court to arrange the physical presence of the parent at the dispositional hearing but only implies that the court cannot deny the parent's right to be present.¹⁰ The parent may also appear through an attorney.¹¹

9.5. CASE SERVICE PLAN REQUIRED BEFORE DISPOSITION

The Juvenile Code requires that when the DHS recommends that the child be placed with someone other than the parent, the DHS is to prepare a written report to the court as to the efforts made to prevent the child's removal from the home, or the efforts made to rectify the conditions which caused the child's removal.¹² The report is to include all of the following¹³:

- (a) If services were provided to the child and his or her parent, guardian, or custodian, the services, including in-home services that were provided.
- (b) If services were not provided to the child and his or her parent, guardian, or custodian, the reasons why services were not provided.
- (c) Likely harm to the child if the child were to be separated from his or her parent, guardian, or custodian.
- (d) Likely harm to the child if the child were to be returned to his or her parent, guardian, or custodian.

The purpose of these provisions is to focus the attention of the court, the agency, and attorneys on ways in which removal of the child could have been prevented and on ways to protect the child in less drastic ways than out of home placement. These provisions carry out the preference stated in the preamble of the Juvenile Code that children receive necessary care, guidance, and control "preferably in his or her own home."¹⁴

⁸. MCR 3.973(C)

⁹. MCR 3.973(B)

¹⁰. MCR 3.973(D); *In re Vasquez*, 199 Mich.App. 44 (1993)

¹¹. *Id.*

¹². MCL 712A.18f(1); MCR 3.973(E)(2)

¹³. MCL 712A.18f(1)

¹⁴. MCL 712A.1(3)

The DHS is also required to prepare a case service plan and make it available to the court and the parties.¹⁵ The case service plan shall include, but not be limited to, the following¹⁶:

- (a) The type of home or institution in which the child is to be placed and the reasons for the selected placement.
- (b) Efforts to be made by the child's parent to enable the child to return to his or her home.
- (c) Efforts to be made by the department to return the child to his or her home.
- (d) Schedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child's return to his or her home or to facilitate the permanent placement of the child.
- (e) Unless visitation, even if supervised, would be harmful to the child, a schedule for regular and frequent visitation between the child and his or her parent, which shall not be less than once every 7 days.

In addition, to ensure that the case service plan addresses the child's medical needs, the DHS is required to review the child's case with the child's physician if the physician has diagnosed the child's abuse or neglect as involving: failure to thrive; Munchausen Syndrome by Proxy; Shaken Baby Syndrome; a bone fracture that is diagnosed as being the result of abuse or neglect; or drug exposure.¹⁷ In such cases, the physician must be allowed to testify regarding the case service plan and the court shall notify each physician of the hearing's time and place.¹⁸

The court must review the agency case service plan and other evidence bearing on disposition before entering an order of disposition.¹⁹ Upon consideration of this report "and any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution or relative with whom the child is placed, lawyer-guardian ad litem, attorney, or guardian ad litem," the court is to include a statement in the order of disposition as to whether reasonable efforts have been made to prevent the child's removal from the home, or to rectify the conditions that caused the child to be removed.²⁰

15. MCL 712A.18f(2)

16. MCL 712A.18f(3)

17. MCL 712A.18f(6)

18. MCL 712A.18f(7)

19. MCL 712A.18f(4); MCR 3.973(F)(2)

20. MCL 712A.18f(4); MCR 3.973(F)(3)

9.6. EVIDENCE

The court rules provide that the Michigan Rules of Evidence do not apply at the initial dispositional hearing.²¹

All relevant and material evidence, including oral and written reports, may be received and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial.

Parties are to be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making reports when such individuals are reasonably available.²²

If an exam, interview or course of treatment is court-ordered, no assertion of privilege, other than attorney-client, shall prevent the receipt and use, at the dispositional phase, of the materials prepared.²³

9.7. DISPOSITIONAL ORDERS

9.7.1. *Compliance with Case Plan; Court Has Broad Authority at Disposition*

Following the dispositional hearing, the court is required to enter an order of disposition.²⁴ The court may order compliance with all or any part of the case service plan, as the court considers necessary.²⁵ The Juvenile Code specifically authorizes the court to enter a variety of orders of disposition.²⁶ In addition, the Michigan Supreme Court has held that the Legislature has conferred very broad authority on the court in making dispositional orders.²⁷

Thus, we hold that the Legislature has conferred very broad authority to the probate court. There are no limits to the "conduct" which the court might find harmful to a child. The Legislature intended that the court be free to define "conduct" as it chooses. Moreover, in light of the directive that these provisions are to be "liberally construed" in favor of allowing a child to remain in the home, we find these sections supportive of the courts order prohibiting the father from living with his daughter.

9.7.2. *Warn and Dismiss*

²¹. MCR 3.973(E)(1) & (2)

²². MCR 3.973(E)(3)

²³. MCR 3.973(E)(1)

²⁴. MCR 3.973(F)(1)

²⁵. MCL 712A.18(4); MCR 3.973(F)(2); *In re Draper*, 150 Mich.App. 789, 801 (1986) affirmed the Juvenile Court power to require a parent to attend counseling sessions as a part of disposition

²⁶. MCL 712A.18(1)(g)

²⁷. *In re Macomber*, 436 Mich. 386, 393 (1990)

The court may warn the child's parent, guardian, or custodian and dismiss the petition.²⁸

9.7.3. *Under Supervision in Home of Parent or Relative*

The court may place the child under supervision in the child's own home or in the home of an adult related to the child.²⁹ The supervision shall be upon such terms and conditions, as the court determines necessary for the physical, mental, or moral well-being and behavior of the child, including reasonable rules for the conduct of the parents, guardian, or custodian.³⁰

9.7.4. *Foster Care*

The court may place the child in foster care through a public or private agency.³¹ "Foster care" means care provided to a juvenile in a foster family home, foster family group home, or child caring institution licensed or approved under Act No. 116 of the Public Acts of 1973, MCL 722.111 to 722.128, or care provided to a juvenile in a relative's home under a court order.³²

9.7.5. *Place in or Commit to Institution or Agency*

The court may place or commit the child to a public or private institution or agency.³³

9.7.6. *Order Necessary Health Care and Incidentals*

The court may also order that the child be provided with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere. The statute requires that a local physician-patient relationship be maintained as much as possible. The court may also provide the child

²⁸. MCL 712A.18(1)(a)

²⁹. "Related" means any of the following relationships, by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. MCL 712A.18(1)(b)

³⁰. MCL 712A.18(1)(b)

³¹. The statute does not clearly and explicitly include the most common disposition, "foster care" in its listing in MCL 712A.18(1), but it does allow the child to be placed in or committed to public or private institutions or agencies -- which implies a foster placement. Perhaps the most common disposition in child protection cases is placement in foster care under the supervision of the Department of Human Services

³². MCL 712A.13a(1)(e)

³³. MCL 712A.18(1)(d) & (e)

with clothing and other incidental items, as the court considers necessary.³⁴

9.7.7. *Enter Orders Affecting Adults*

The Juvenile Code explicitly permits the court to exercise broad powers over adults.

The juvenile division of the probate court shall have jurisdiction over adults as provided in the chapter and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.³⁵

The Legislature strengthened the court's power over adults in its recent amendments affecting nonparent adults³⁶:

The court may issue an order that affects a nonparent adult and that does 1 or more of the following:

- (a) Requires the nonparent adult to participate in the development of a case service plan.
- (b) Requires the nonparent adult to comply with a case services plan.
- (c) Permanently removes the nonparent adult from the home of the child as provided in section 13a of this chapter.
- (d) Permanently restrains the nonparent adult from coming into contact with or within close proximity of the child.

A first violation of an order affecting a nonparent adult may be a misdemeanor punishable by up to 1-year imprisonment and a fine of \$1000, or both; a second violation may be a felony punishable by imprisonment of up to 2 years and a fine of \$2000, or both.³⁷ The court may also punish a violation through civil or criminal contempt.³⁸

Section 18 of the Juvenile Code also permits the court to order the parents, guardian, custodian or any other person to refrain from continuing conduct which, in the opinion of the court, has caused or tended to cause the child

³⁴. MCL 712A.18(1)(f)

³⁵. MCL 712A.6

³⁶. MCL 712A.6b(1)

³⁷. MCL 712A.6b(2) & (3)

³⁸. MCL 712A.6b(5)

to come within or to remain under the jurisdiction of the court or which obstructs placement or commitment of the child pursuant to an order under this section.³⁹

In *Macomber*, the Michigan Supreme Court held that post-adjudication orders requiring the father to leave the home and pay child support were permitted under the Juvenile Code.⁴⁰ Notice and opportunity for hearing are necessary before orders affecting adults are effective⁴¹:

(4) An order directed to a parent or person other than the child shall not be effectual and binding on the parent or other person unless opportunity for hearing has been given pursuant to issuance of summons or notice as provided in [MCL 712A.12 and 712A.13] and until a copy of the order, bearing the seal of the court, is served on the parent or other person, as provided in [MCL 712A.13].

The family court could order an adult to comply with conditions necessary to ensure a child's safety with the adult although he/she was not a respondent in the adjudication proceedings.⁴²

9.7.8. *Appoint a guardian*

The court may appoint a guardian for a child once the case has been adjudicated under the neglect jurisdiction of the court *and* a petition for guardianship has been filed by a person interested in the welfare of the child under the guardianship statutes, MCL 700.5204. If a guardianship is ordered by the court, the juvenile neglect petition may be dismissed.⁴³

9.7.9. *Order Reimbursement*

Taking into account the income and resources of the parent, guardian, or custodian, the order of disposition must include a provision for reimbursement for the cost of care or service.⁴⁴ The court may also require the parents, guardians or custodians to reimburse the court for attorney fees for the child and/or the parent.⁴⁵

³⁹. MCL 712A.18(1)(g)

⁴⁰. *In re Macomber*, 436 Mich. 386 (1990)

⁴¹. MCL 712A.18

⁴². *Family Independence Agency v. Bowman (In re CR)*, 250 Mich.App. 185 (2002)

⁴³. MCL 712A.18(1)(h)

⁴⁴. MCL 712A.18(2)

⁴⁵. MCL 712A.18(5)

9.7.10. *Child Support*

The court may order one or both of the child's parents to pay child support. All child support orders entered must comply with MCL 552.605 and MCR 3.211(D).⁴⁶

9.8. SUPPLEMENTAL ORDERS OF DISPOSITION; TEMPORARY OR PERMANENT CUSTODY

Once the dispositional order is entered, the court may amend or supplement those orders as necessary. The changes to the dispositional order typically happen at dispositional review hearings and at a hearing to terminate parental rights. The statute says that at any time, if a child remains under the jurisdiction of the court, a cause may be terminated or an order amended or supplemented within the authority granted the court in section 18. An amended or supplemented order is to be referred to as a "supplemental order of disposition."⁴⁷

In all cases involving custody, the court shall include in its order of disposition whether the child is placed in the temporary or permanent custody of the court. No supplemental order of disposition placing the child in the permanent custody of the court shall be made except after notice and hearing as provided in the statute and rules regarding termination of parental rights and permanent custody.⁴⁸

⁴⁶. MCR 3.973(F)(5)

⁴⁷. MCL 712A.19(1)

⁴⁸. MCL 712A.20