

# AT A GLANCE: Kinship Legal Guardianship

## Basic Requirements for All KLG Cases

The Kinship Legal Guardianship statute (N.J.S.A. 3B:12A-1-6 et seq. and N.J.S.A. 30:4C-84) became effective in 2002 providing legal permanence to an existing relationship.

- ❖ **Kin broadly defined** (legal, biological or emotional relationship to child)
- ❖ Child has lived with caregiver for **at least 1 year**
- ❖ Kin has made **commitment and has ability** to raise child until 18 or until finishes high school (judge still needs to look at caregiver's ability, commitment and appropriateness to raise the child)
- ❖ **Parents' incapacity is of such a serious nature** that the parents are unable, unavailable or unwilling to perform the regular and expected functions of care and support of the child and that the parents' incapacity is unlikely to change for the foreseeable future
- ❖ Standard is **clear and convincing**

### DCP&P KLG cases require two additional findings:

1. **Reasonable efforts were not necessary or unsuccessful** (services offered by DCP&P), **AND**
2. **Adoption of the child is neither feasible nor likely**
  - If caregiver willing to adopt, parent cannot use KLG as defense to termination of parental rights complaint. [DYFS v. P.P. and S.P., 180 N.J. 494 (2004)]
  - If relative is not willing to adopt, KLG can be a permanent option in appropriate circumstances. [DYFS v. D.H. and J.V., 398 N.J. Super. 333 (App. Div. 2008)]

## Factors to be Considered in Determining KLG

- ❖ Duration of time separated from parent
- ❖ Duration of time in current placement
- ❖ Sibling presence in the home (maternal or paternal)
- ❖ Extent and nature of the child's needs
- ❖ Reunification when out of placement this long depends on relationship child has established with caregiver and parent
- ❖ If child has special needs– developmental or medical ability of the parent to address those needs
- ❖ Child's knowledge of parent:
  - parent unknown to child
  - parent unavailable to child
  - parent unknown to the Division
- ❖ Caretakers' wishes

**In making a determination about whether to appoint a caregiver as the kinship legal guardian, the court shall consider the wishes of the child if the child is 12 years of age or older, unless unique circumstances exist that make the child's age irrelevant.**

[N.J.S.A. 3B:12A-6(a)(7)]

## In a KLG Arrangement

The **child** keeps:

- ❖ his/her current home
- ❖ a relationship with his/her parents, siblings and relatives, **and**
- ❖ the right to any benefits derived from his/her parents (inheritance eligibility for benefits, or insurance)

The **parent** keeps:

- ❖ the right to visit with the child as determined by the judge,
- ❖ the authority to consent to adoption or a name change of child, **and**
- ❖ the obligation to pay child support
- ❖ parent can later seek to vacate KLG

The **Kinship Legal Guardian** has the responsibility/rights of care, custody, and supervision of child until age 18. The kinship legal guardian may not:

- change the child's name
- adopt the child, **or**
- agree to an adoption of the child by another person without the parents' consent or a court order

The **removal of a child out of state** by the KLG is subject to the removal factors applicable in parent custody cases.

[DYFS v. T.M., 399 N.J. Super. 453 (App. Div. 2008)]

## KLG is dependent on the Parent and Guardian's Ability To:

- ☼ Communicate
- ☼ Cooperate
- ☼ Collaborate
- ☼ Respect Boundaries
- ☼ Compromise
- ☼ Establish Clarity of Responsibilities

## *Differences Between Adoption and Kinship Legal Guardianship*

### ***Adoption***

- ❖ Termination of parental rights/voluntary surrenders
- ❖ Adoptive parent(s) have all rights & responsibilities for child
- ❖ Child may take the adoptive parent's last name as his/her own
- ❖ DCP&P provides adoption subsidy (if child meets federal criteria which most children meet)
- ❖ Post-adoption child care may be provided to children who are subsidy eligible & if adoptive parents meet eligibility requirements for program.
- ❖ Birth parent's obligation for financial support stops upon finalization of an adoption.
- ❖ Child has the right to inheritance from adoptive parents
- ❖ Federal tax credit available for those adoptive families who have federal income tax liability
- ❖ Medical coverage is NJ Medicaid. If the adoptive parent moves out-of-state, NJ will request Medicaid from new state thru the Interstate Compact on Adoption and Medical Assistance (ICAMA).

### ***Kinship Legal Guardianship***

- ❖ Birth parents' rights not terminated
- ❖ Parent retains the right:
  - to visit (subject to restriction by the courts)
  - to consent to the adoption of the child
  - to consent to child's name change
  - to petition the court to vacate KLG and seek custody of the child
  - obligation to pay child support
- ❖ Kinship legal guardian legal responsibility/rights of care, custody, and supervision of child.
- ❖ Preschool Child Care not available.
  - DCP&P provides KLG subsidy which is non-transferable
- ❖ Child has no right to inheritance unless included in caregiver's will.
- ❖ No federal tax credit for finalizing the KLG judgment
- ❖ Medical coverage is NJ Medicaid, so if kinship legal guardian moves out of state, he/she will need to apply for Medicaid coverage through the new state of residence.
- ❖ KLG automatically terminates when the child turns 18
- ❖ If a single KLG guardian dies, KLG terminates; the guardian cannot arrange for the ongoing care of the minor. Rather, the case must return to court.

### ***Amending or Vacating a KLG***

- ❖ The post-judgment application may be filed by any party to the original KLG action.
- ❖ For those matters with previous DCP&P litigation, the attorneys and DCP&P must be served.
- ❖ Parent who files the application to vacate the KLG judgment has burden of proof to show by clear and convincing evidence that [*DYFS v. L.L., 201 N.J. 210 (2010)*]
  - (1) parent has overcome the incapacity that led to the original removal and
  - (2) termination of KLG is in the best interest of the child