Excerpt from:

Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* (2014)

Ch. VII, Recurring Factual Situations in the Trial Courts, pp. 41-47

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1. **VISITATION**

Visitation between parents and children is an essential service in the reunification process. Some experts argue that visitation or access is the most important part of any reunification plan.[[1]](#footnote-1) Frequent visiting maintains family relationships, helps families cope with changing relationships, empowers and informs parents, and enhances children’s well-being. In addition, it helps families confront reality (the situation in which they find themselves), and it provides a time and place to practice new behaviors.[[2]](#footnote-2) Ongoing contact with the child enhances a parent’s motivation to change.[[3]](#footnote-3) Visitation also permits others to assess the parent-child relationship and assist parents to learn safe and effective parenting behaviors.[[4]](#footnote-4)

Studies of children in out-of-home care repeatedly find that children who visit frequently are more likely to be reunited with their parents.[[5]](#footnote-5) Studies also show the association between frequent visitation and the emotional well-being of both children and parents.[[6]](#footnote-6) Regardless of the outcome of the legal case before the court, both the child and parents are best served by frequent visitation.[[7]](#footnote-7)

Child development experts agree that no standard visitation schedule exists for all children. Creation of a visitation order must focus on the child’s developmental needs.[[8]](#footnote-8) For example, infants need frequent and consistent contact with their parents. Separation evokes strong and painful reactions.[[9]](#footnote-9) According to the American Academy of Pediatrics:

Weekly or other sporadic “visits” stretch the bounds

of a young child’s sense of time and do not allow for

a psychologically meaningful relationship with estranged

biological parents….For parent-child visits to be

beneficial, they should be frequent and long enough

to enhance the parent-child relationship.[[10]](#footnote-10)

Some juvenile court judges recognize this principle. For example, Judge Douglas Johnson wrote in an article that

the standard supervised biweekly, one-or-two hour visitation is inadequate, inappropriate and unacceptable. Reasonable efforts in this context means meaningful daily or near daily parenting time to build the infant/parent relationship and achieve permanency. A judge can rule earlier on whether a parent is making progress toward becoming a proper parent when the parent is given a fair opportunity to learn skills and apply them. If Health and Human Services is unwilling to provide such services, the judge could rule that a negative reasonable efforts finding will be issued in 30 days. If so ruled, Health and Human Services will not receive its foster care matching dollars under Federal Title IV-E Foster Care and Adoption Assistance Program. But Health and Human Services must still provide the services as ordered.” [[11]](#footnote-11)

A NCJFCJ publication stressed the importance of “continued and regular contact between family members,” recommending daily visits between a mother and her baby.[[12]](#footnote-12) A San Francisco Superior Court Standing Order mandates infants from birth to five years of age receive “at least six hours of visitation with their parent(s) or guardian(s) each week.”[[13]](#footnote-13)

Ensuring early and adequate visitation presents significant challenges for social workers. After the agency removes a child from parental care, the immediate concerns of the social worker include finding a temporary placement for the child and preparing documents for a court hearing that will take place almost immediately. After completion of these tasks the social worker then decides the location of the visits, the necessary transportation for the parents and child in order to meet at the designated visitation location, the length and frequency of the visits, whether the visits must be supervised, and who will provide that supervision, and whether the social worker will evaluate the child’s reactions after the visit. For some of these issues, the social worker makes recommendations to the court. The frequency, duration, and supervision involve legal issues that the judge in many states must determine after hearing recommendations from the social worker.[[14]](#footnote-14) Judges should also determine whether transportation issues exist, particularly where public transportation is limited.

Some state social service agencies developed standards and procedures regarding visitation. One survey indicated that about half of the states specify a minimum of biweekly visits as the standard; the remaining states had no standards regarding visitation frequency.[[15]](#footnote-15) In state court litigation parents argued that the failure of the agency to adequately facilitate visitation prevented them from maintaining a connection with their children because the agency did not adequately facilitate visitation.[[16]](#footnote-16) However, many jurisdictions find visitation problematical due to the lack of agency resources which often makes frequent parent-child contact difficult.[[17]](#footnote-17)

Many state child welfare agencies instituted policies and procedures on parent-child visitation.[[18]](#footnote-18) Ms. Peg Hess, a recognized expert in parent-child visitation, concludes that agency policies grant too much discretion to the agency and that her study warrants a concerted effort to define visitation standards and frequency.[[19]](#footnote-19) She points out that children-in care whose parents frequently visit are more likely to have high well-being ratings and to adjust well to placement than those children whose parents visit less frequently or not at all. Children whose parents visit frequently are also more likely to be discharged from placement.[[20]](#footnote-20) She concludes that the frequency of visitation is the result of agency policy and resources, the location of the placement, the cooperation of foster parents, and caseworker attitudes and assessment of the case.[[21]](#footnote-21)

Reasonable efforts rulings in both federal and state courts have focused on the adequacy of the visitation between parents and their children. In one federal case the court ordered the state to provide fair hearings for denials of visitation to parents with children placed in foster care.[[22]](#footnote-22) The court held that the agency must provide visits within the first week of a child’s placement in foster care, and service plans must include provisions for visits at least every two weeks and take into account the time commitments of the parent.[[23]](#footnote-23) In another federal case, the consent decree declared that visits should occur in the home of the biological parents or the foster family whenever possible, or otherwise in a dignified setting that is natural and homelike.[[24]](#footnote-24) Several federal courts resisted making orders regarding visits for parents and children in care.[[25]](#footnote-25)

Several state appellate courts discuss visitation in the context of reasonable efforts requirements. Some of these decisions emphasize the importance of visitation in maintaining the parent-child relationship. The Rhode Island appellate court in the case of *In re Nathan F.* stated “[t]he state must demonstrate that the department has …’made suitable arrangements for visitation….’”[[26]](#footnote-26) In *In re Kristina L.*,[[27]](#footnote-27) the agency arranged for the mother to see her daughter one hour every 2 weeks. When a termination hearing was held, the child was “bonded” to the foster parents. The mother appealed the termination decision, and the Rhode Island Supreme Court reversed the trial court ruling because the agency failed to provide reasonable efforts to the family. The Supreme Court noted that it was no surprise that the child bonded to the foster parents in light of the “totally inadequate” visitation schedule arranged by the agency.

Increased judicial oversight of parent-child visitation is vitally necessary to ensure adequate contact.[[28]](#footnote-28) In a California case, *In re Alvin R.*, the agency recommended delaying visitation until the initiation of counseling sessions for the father and son. Counseling was delayed, and as a result no father-son visitation occurred. On appeal the appellate court reversed the trial court finding that the agency had provided reasonable efforts stating “[t]he longer parent and child live with no visitation, the less likely there will ever be any meaningful relationship.”[[29]](#footnote-29) In another California case, *Tracy J. v Superior* Court[[30]](#footnote-30) the appellate court held that the agency failed to make reasonable efforts, and that visitation was inadequate given the safety concerns present in the case. Although the parents had limited intellectual functioning, they fully cooperated with services offered, and visits had been reported as positive. Nevertheless the agency permitted only one supervised visit a week. The appellate court held that this was a denial of reasonable efforts and that the agency should have increased the visitation. A New Mexico Appellate Court reached a different result in a case where agency delays prevented meaningful visitation between the father and his child. The court concluded that the more immediate needs of the child for permanency should prevail.[[31]](#footnote-31)

Providing adequate visitation with an incarcerated parent presents a challenge. Some state courts have ruled that limited visitation while parents are incarcerated violates the reasonable efforts requirement.[[32]](#footnote-32) These cases hold that incarceration should not mean the end of a parent-child relationship.[[33]](#footnote-33) In an Ohio case the agency’s case plan provided only general goals. The agency scheduled no regular visits and required the parents to call and arrange visits for no more than once a week and for no longer than one hour. The appellate court reversed the termination of parental rights,[[34]](#footnote-34) stating its opinion that when the agency provides visitation to an incarcerated parent, the appellate court will be ready to affirm reasonable efforts.[[35]](#footnote-35) If a parent fails to take advantage of visitation, the court will likely affirm the efforts of the agency even if those efforts were minimal.[[36]](#footnote-36)

The author while sitting as Presiding Judge of the Santa Clara County Juvenile Court became concerned about the quality and quantity of parent-child visitation during the family reunification period. At the time the agency scheduled visitation for once a week for two hours at a large converted gymnasium. The author asked two well-known psychologists to review the visitation location and to prepare a report addressing the question: is the current parent visitation program supportive of family reunification? Their report indicated that the visitation failed to support family reunification, the environment was too impersonal, and the visits occurred too infrequently. The author met with the agency director who responded with significant changes in the county’s entire visitation scheme. The author’s letter to the psychologists, their report, the author’s letter to the Director of Children’s Service, his response, and the author’s letter to the local newspaper are contained in Appendix E [*see,* Edwards, *Reasonable Efforts: A Judicial Perspective* (2014), Exhibit E].

The juvenile court judge must take an active leadership role to ensure improvements occur in local visitation practice. The following steps outline the measures a judge should take to provide children in foster care appropriate visitation:

+ Recognize that visitation is a critical element of the family reunification process and be prepared to address visitation at each hearing.

+ Ensure that a visit take place soon after the removal as both the parent and child will be experiencing grief over the separation.[[37]](#footnote-37)

+ Oversee the child’s initial placement decision to ensure that it supports frequent, meaningful visitation.

+ Develop clear, enforceable, written visitation orders for each case.

+ Develop local rules that address visitation issues.

+ Determine the frequency and duration of visitation by measuring the needs of the child and family rather that the capacity of the agency.

+ Encourage cross-systems training for all participants in the juvenile dependency court system to address child development principles and strategies to improve the quality and quantity of visitation.

+ Examine best practices and draw from model programs from around the country to improve visitation practices.

+ Facilitate collaborative community efforts to improve visitation practices and overcome barriers to successful visitation.[[38]](#footnote-38)

+ Work with the agency and community members to make transportation available so that frequent visitation is possible.

+ Discuss visitation at court system’s meetings so that attorneys and service providers can contribute their ideas.[[39]](#footnote-39)

Children and their parents benefit from visitation, yet policies and practice in most states reveal the inadequacy of visitation both in quantity and quality. Moreover, very few appellate decisions address visitation, which indicates that attorneys fail to litigate issues surrounding the quality and quantity of visitation. Visitation plays a critical part in the family reunification process. Judges and attorneys must pay particular attention to this issue.[[40]](#footnote-40)

**Note: Edwards, *Reasonable Efforts: A Judicial Perspective* (2014) is available from the author. Contact him by email at** [**judgeleonardedwards@gmail.com**](mailto:judgeleonardedwards@gmail.com) **or by visiting his webpage at judgeleonardedwards.com.**

1. Fanshel, D., *On the Road to Permanency,* CWLA, New York, 1982, and see the sources cited in Edwards, L., ”Judicial Oversight of Parental Visitation in Family Reunification Cases,” *Juvenile and Family Court Journal,* Vol. 53, No. 3, 2003, at pp. 1-24 pp 2-5; Hess, P. & Proch, K.O., *Family Visiting in Out-of-Home Care: A Guide to Practice*, Child Welfare League of America, Washington, D.C., 1988; Hess, P. “Case and Context: Determinants of Planned Visit Frequency in Foster Family Care”. CWLA, N.Y. Vol. LXVII, No. 4, July/August 1988. [↑](#footnote-ref-1)
2. New developments in dealing with maltreating parent-child relationships have demonstrated significant improvements in those relationships. See TImmer, S., Urquiza, A., Zebell, N., & McGrath, J., “Parent-Child Interaction Therapy: Application to maltreating parent-child dyads,” *Child Abuse & Neglect*, Vol. 29 (2005) at pp. 825-840. [↑](#footnote-ref-2)
3. Millham, S., Bullock, R., Hosie, K., & Haak, M., *Lost in Care: The Problems of Maintaining Links Between Children in Care and Their Families*, Hants, UK: Gower (1986). [↑](#footnote-ref-3)
4. *Id*. “Visitation between parents and their children in foster care is generally considered to be the most important factor contributing toward timely family reunification, a major feature of permanency planning for children in foster care.” Roemer, L., “Information Packet: Visiting with Family in Foster Care,” April, 2008. [↑](#footnote-ref-4)
5. Fanshel, D. “On The Road to Permanency,” *op.cit.*, footnote 167; Beckerman, A., “Charting a Course: Meeting the Challenge of Permanency for Children with Incarcerated Mothers,” *Child Welfare*, Vol. 77, No. 5, (Sept./Oct. 1998) at pp 513-529; Fanshel, D., & Shinn, E., *Children in Foster Care: A Longitudinal Investigation,* *op.cit.* footnote 9 pp. 85-111 & 486-495.. [↑](#footnote-ref-5)
6. Weinstein, E., *The Self-Image of the Foster Child,* Russell Sage Foundation, N.Y. 1960; “Final Report,” Michigan Parent-Child Visitation Task Force, March 2013 at pp 14-15; McWey, L., & Mullis, A. “Improving the Lives of Children in Foster Care: The Impact of Supervised Visitation,” *Family Relations*, Vol. 53, No. 3, April, 2004, at pp. 293-300. [↑](#footnote-ref-6)
7. Cantos, A., Cries, L., & Slis, V., “Behavioral Correlates of Parental Visiting During Family Foster Care,” *Child Welfare*, Vol. 76, No. 2, (1997)at pp. 309-329. [↑](#footnote-ref-7)
8. See the chart explaining appropriate visitation for different age groups written by Dr. David Arredondo, “Guidelines to the Developmental Needs of Children According to Age,” found in Arredondo, D., & Edwards, L., Arredondo, D., & Edwards, L, “Bonding, Attachment, and Reciprocal Connectedness: Limitations of Attachment Theory in the Juvenile and Family Court,” *Journal of the Center for Families, Children & the Courts*, California Administrative Office of the Courts, 2000 at pp 109-127, Appendix A of that article. [↑](#footnote-ref-8)
9. Goldsmith, D.F., Oppenheim, D., and Wanlass, J., “Separation and Reunification: Using Attachment Theory and Research to Inform Decisions Affecting the Placement of Children in Foster Care,” *Juvenile and Family Court Journal*, Vol. 55, No. 2, 2004, at pp. 1-13, at p. 6. [↑](#footnote-ref-9)
10. American Academy of Pediatrics Committee on Early Childhood, “Adoption and Dependent Care,” 2000 at p. 1148.

    “For very young children, infrequent visits are not enough to establish and maintain a healthy parent-child relationship.” Cohen, J., & Youcha, V., “Zero to Three: Critical Issues for the Juvenile and Family Court,” *Juvenile and Family Court Journal*, Vol. 55, No. 2 (Spring, 2004) at pp. 15-27, 22. [↑](#footnote-ref-10)
11. Johnson, Hon. Douglas, “Babies Cry for Judicial Leadership: Reasonable Efforts for Infants and Toddlers in Foster Care, *The Judge’s Page*, Online publication of National CASA, October, 2007. [↑](#footnote-ref-11)
12. NCJFCJ, P*rotocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases,* Reno, (1992) at pp. 4, 20-22. [↑](#footnote-ref-12)
13. Superior Court of San Francisco, Juvenile Division, Standing Order No. 201, found in Appendix D, Edwards, L. “Judicial Oversight of Parental Visitation in Family Reunification Cases,” *op.cit.*, footnote 167 at p. 17. [↑](#footnote-ref-13)
14. “There is no question but that the power to regulate visitation between minors determined to be dependent children and their parents rests in the judiciary.” *In re Jennifer G.*, 270 Cal.Rptr. 548, 327 (Cal. Ct. App. 1990); *In re Shawna M.*, 24 Cal.Rptr. 2d 126 (Cal.Ct.App. 1993). [↑](#footnote-ref-14)
15. Hess, P.M. & Proch, K., “How the States Regulate Parent-Child Visiting, *Public Welfare*, Vol. 64 (1986) at p. 12 [↑](#footnote-ref-15)
16. As one appellate court noted, denying visitation when visitation is possible is incompatible with encouraging and strengthening the parent-child relationship. *In re Guardianship of D.M.H.*, 736 A.2d 1261, 1274 (N.J. 1999) “Consistent efforts to maintain and support the parent-child bond are central to [a] court’s determination” of whether the agency made reasonable reunification efforts.” (at 1276). But some courts seem to blame the parents for poor visits. *Matter of V.M.S.*, 446 N.E.2d 632 (Ind. Ct. App. 1983) and *Matter of Christine Tate*, 312 S.E.2d 535 (N.C. Ct. App. 1986) [↑](#footnote-ref-16)
17. Edwards, L., “Judicial Oversight of Parental Visitation in Family Reunification Cases,” *op. oit.* footnote 167 at pp. 1-24 [↑](#footnote-ref-17)
18. Hess, P., “Visiting Between Children in Care and Their Families: A Look at Current Policy,” available at http: www.hunter.cuny.edu/socwork/nrcfcpp/downloads/visiting\_report-10-29-03.pdf. [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. Hess, P., “Visiting Between Children in Care and Their Families: A Look at Current Policy,” The National Resource Center for Foster Care & Permanency Planning, Hunter College School of Social Work, A service of the Children’s Bureau, October 2003 at p. 2. [↑](#footnote-ref-20)
21. Hess, P., “Case and Context: Determinants of Planned Visit Frequency in Foster Family Care,” *op.cit.* footnote 167. [↑](#footnote-ref-21)
22. *J.J. v Ledbetter*, No. CV 180-84 (S.D. Ga. Slip ops. filed Aug. 27, 1984, Sept. 21, 1984, and Jan. 21, 1985. [↑](#footnote-ref-22)
23. *Id.*  [↑](#footnote-ref-23)
24. *G.L. v Zumwalt*, No. 77-0242-CV-W-4 (W.D. Mo. Consent decree filed Mar. 21, 1983). [↑](#footnote-ref-24)
25. See *Scrivner v Andrews*, 816 F.2d 261 (6th Circuit. 1987) and *State of Vermont Dep’t of Soc. & Rehab. Serv. v U.S. Dep’t of Health & Human Services*, 798 F.2d 261 (2nd Cir. 1986); *Winston v Children and Youth Services of Delaware County*, 948 F.2d 1380 (3d. Cir. 1991) –This was an action by parents whose children had been removed to establish specific rights to visitation. The federal court concluded that because of the vague language in the federal statute, the agency need not provide any particular amount of visitation or even no visitation at all if other services were provided. (at 1389-1390). [↑](#footnote-ref-25)
26. 762 A.2d 1193, 1195 (R.I. 2000). The benefits of frequent visitation are listed in “Smariga, M, “Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know,” *Practice & Policy Brief*, ABA Center on Children and the Law, July 2007, at p. 6. [↑](#footnote-ref-26)
27. 520 A.2d (R.I. 1987) [↑](#footnote-ref-27)
28. Edwards, L., *op.cit.*, footnote 167 at pp. 9-12. [↑](#footnote-ref-28)
29. *In re Alvin R.*, 134 Cal.Rptr.2d 210, 217; the appellate court further noted that the department submitted no evidence of having made a good faith effort to arrange counseling sessions. Because the child needed therapy before being returned to his father, the trial court did not err in finding that such a return would have been detrimental.. [↑](#footnote-ref-29)
30. 202 Cal.App.4th 1415 (Cal. Ct. App. 2012) [↑](#footnote-ref-30)
31. *State ex rel. Children, Youth & Families Dep’t*, 47 P.3d 859 (N.M. Ct. App. 2002) [↑](#footnote-ref-31)
32. *In re Brittany S.*, 17 Cal. App.4th 1399; 22 Cal. Rptr.2d 50 (1993)(agency did not provide visitation while mother was incarcerated); See also *In re David D.*, 28 Cal.App.4th 941 (agency and court placed an unreasonable burden on mother thus preventing her from visiting –TPR reversed); *Mark N. v Superior Court*, 60 Cal.App.4th 1158 (agency did not follow court order to provide an incarcerated mother with visitation); *In the Interest of T.A. and O.A.* (2003 WL 21459553 Iowa App., 2003) [↑](#footnote-ref-32)
33. Or as the court put it, “Go to prison, lose your child” is an unacceptable maxim. *Id.*at p. 1402. [↑](#footnote-ref-33)
34. *In re Brown*, 648 N.E.2d 576 (Ohio, Ct. App. 1994) [↑](#footnote-ref-34)
35. *In re Hector L.*, 730 A.2d 106 (Conn. App. Ct. 1999); *In re Ebony H.*, 789 .2d 1158, 1163. [↑](#footnote-ref-35)
36. *In re Guardianship of D.M.H.*, 736 A.2d 1261 (N.J. 1999); *Div. of Family & Youth Serv. v V.S.*, No. S-10350, 2002 WL 1004097 (Alaska May 15, 2002); *In re Nicole J.*, 2002 WL 1610216 (Conn. Super. Ct. June 25, 2002)  [↑](#footnote-ref-36)
37. Fahlberg, V., *A Child’s Journey Through Placement*, Jessica Kingsley, London, 2012, at pp. 141-175. Bowlby, J. *Attachment and Loss. Vol. 2 Separation*, New York, Basic Books, (1973) [↑](#footnote-ref-37)
38. Edwards, L., *op.cit.* footnote 167 at pp. 11-12. [↑](#footnote-ref-38)
39. Both Polk County, Iowa, and the state of Maine have developed visitation guidelines that are comprehensive and sensitive to the developmental needs of children. The Iowa guidelines were developed by both the agency and the courts. Tabor, Nancy, “State of Iowa Court Improvement Project, Resource Manual: Visitation Issues in Juvenile Court,” 22 *et.seq* (2001); Maine Department of Human Services, Child and Family Services Manual (2002). [↑](#footnote-ref-39)
40. *Id.* [↑](#footnote-ref-40)