

# MD CANI – The 1<sup>st</sup> 75 Days

## CASE SCENARIO

Handout Number Two

### PRELIMINARY PROTECTIVE CUSTODY HEARING

HELD ON MARCH 12, 2019

#### The Proceeding:

Judge Righteous called the case, read the complaint into the record, and explained what the hearing was about. He asked Ms. Smith if she wanted a lawyer, to which she responded, “I don’t need no lawyer.” Considering the allegations in the Complaint and after observing Ms. Smith’s demeanor while he was reading the complaint into the record, Judge Righteous told Ms. Smith she might really need lawyer, so he was going to provide her a free lawyer anyway. Ms. Smith replied, “Whatever.” Judge Righteous appointed Lawyer Bill. Lawyer Bill asked the judge if he could have a minute to talk to his client. Judge Righteous said, “Sure, take all the time you need, I am going to step out to make a phone call and I will be back in five minutes.” Judge Righteous returned shortly and the hearing began. Case Manager Dodson testified to information in the fact pattern for the removal, as well as the following:

- She tried to find other relatives, but Ms. Smith would not cooperate.
- That the maternal grandmother, Ms. Harrison, told her that “none of our family will fool with my daughter because of the way she acts.”
- Ms. Smith has past charges for disorderly conduct, simple battery and terroristic threats, many of which involved family members and were related to her mental health issues.
- Ms. Smith was previously referred to the local Community Service Board.
- For the last few weeks, the local Community Service Board has been providing a Community Service Worker, a counselor, and medication management to Ms. Smith, but Case Manager Dodson does not have any specific information about where the case is now except that Ms. Smith has been somewhat inconsistent with services and drug screens.
- DFCS has had five previous referrals about Ms. Smith regarding the issue of supervision.
- The most recent CPS referral was a couple of months ago with allegations that Ms. Smith has mental health and substance abuse issues and was leaving her children with inappropriate people. No case was opened because it was learned that Ms. Harrison was moving into the house with Ms. Smith and the children, and that Ms. Harrison was supposed to make sure Ms. Smith got some help for her problems.

Det. Scott testified and said that he did not charge Ms. Smith with disorderly conduct the day the children were removed, but the police get called all the time to her house and other places she visits in the community because of her disruptive behavior. He thinks she has been charged several times in the past, but normally just fined and put on probation.

The ER Nurse, Ms. Get Well Soon, testified that, due to Ms. Smith’s statements regarding how the child was injured and the fact that she was so anxious and hypervigilant, she was concerned about Ms. Smith’s ability to properly supervise the child and whether she would seek any follow-up care. Given Ms. Smith’s extreme reaction to the CAT scan, the nurse was also concerned that Ms. Smith may have mental health issues. She testified that based on her experience, it could be that Ms. Smith was high the day she came to the ER, but she is uncertain if her behavior was due to substance abuse or mental health issues. She was most concerned about the injury being

inconsistent with Ms. Smith's account of how the injury was inflicted and the pattern of injuries to Ms. Smith's children. She thinks the children may be at significant risk of physical injury.

Ms. Harrison was in the hallway fussing about her grandbabies being sent so far away and because of her actions, the deputies would not allow her to come into the courtroom. There were no other relatives present.

At the conclusion of the hearing, Judge Righteous appointed Lawyer Suzie to represent the children and CASA Catherine to represent the children's best interest. Judge Righteous found probable cause to believe the children were dependent due to improper supervision, mental health and substance abuse issues. He found that DFCS made reasonable efforts to avoid removal, set the adjudication hearing for March 28<sup>th</sup>, and continued the children in protective custody. Judge Righteous asked Lawyer Bill if Ms. Smith would agree to drug screening and a psychological evaluation so they could move forward with getting services in place, noting that he would probably order that down the road anyway. Lawyer Bill, nervously and with images of due process floating around in his head, said, "Judge, I don't think that would be a good idea because DFCS could use any of that against my client at trial. I think there is a way DFCS can ask for that and have a hearing on it." Judge Righteous replied, "Yea, but that will just take more court time and I will probably order it anyway. But, if that is what you want to do, fine.... Call the next case."

### **Points for discussion:**

GROUP 1 - What were the most critical new facts that came out at the Preliminary Protective Hearing that were not known at the time of removal? Explain how any new information caused you to rethink your previous conclusions about safety threats, vulnerability, or protective capacities? Should the children be returned home immediately or be kept in care until the adjudication hearing? If the children should be returned, what services/safety strategies may allow the children to remain safely in the home?

GROUP 2 - Compare what **should** occur at the Preliminary Protective Hearing to what actually happened. What findings do you need to make to comply with the *RESOURCE GUIDELINES* and federal law?