

New York Law Journal

Analysis

Defining Chronic Substance Abuse in the Context of Terminating Parental Rights

The persistent use of drugs and alcohol can lead to many health and mental health impairments. In particular, the incidence of co-occurring chronic substance abuse and child abuse/neglect and its effects on the ability to parent have been well documented.

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The persistent use of drugs and alcohol can lead to many health and mental health impairments. In particular, the incidence of co-occurring chronic substance abuse and child abuse/neglect and its effects on the ability to parent have been well documented. Consequently, among many other grounds for terminating parental rights, chronic substance abuse is

one. What then is the legal definition of chronic substance abuse such that it can result in the termination of parental rights? If “chronic substance abuse” is not sufficiently defined, how can it be invoked? For instance, if a parent’s urine analysis (“UA”) occasionally tests positive for alcohol or drugs, is that “chronic”? Out of ten UAs,

how many positive results must there be to satisfy the definition?

Plain Meaning of Chronic Substance Abuse

When discussing the grounds for terminating parental rights most states do not use the phrase “chronic substance abuse” in their statutes. One that does, Arizona, [provides](#): “8-533. *Petition; who may file; grounds ...*B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child: ... 3. That the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of **chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period**” (emphasis added). This is not a statute that can be operationalized in a clear and precise manner. Judge Learned Hand once said, “[t]here is no surer way to misread

any document than to read it literally” (*Giuseppe v. Walling*, 144 F.2d 608, 624 (2d Cir. 1944)). With this eminent jurist’s words in mind, the term “chronic” has an intrinsically broad meaning. A dictionary definition offers “continuing or occurring again and again for a long time” or “something that is persistent or endlessly recurrent and troublesome.”

New York Law

Chronic substance abuse is not a term that is clearly defined by statute in New York. We must turn to case law and New York organizations for data, information, statistics, and guidance for a clearer meaning of the term. There are several factors that New York courts consider in determining whether or not a parent’s chronic substance abuse should lead to a finding of permanent neglect and involuntary termination of parental rights. Some of these factors include whether or not the parent

- demonstrated ongoing substance abuse;

- sought any form of substance abuse, mental health or anger management treatment;
- maintained regular and ongoing visitation;
- secured a source of income and suitable housing for the child.

While the above factors, among others, are taken into consideration, the courts do not clearly define the term “chronic.”

According to the New York State Office of Alcoholism and Substance Abuse Services (OASAS), in 2010, approximately 1.77 million adults in New York State had a substance abuse problem. It is unclear how many were ‘chronic’ in the legal sense.

In the case *In re Moniea C.*, 9 A.D.3d 888, 889, 779, N.Y.S.2d 685, 687 (2004), the court held that a child be considered a permanently neglected child and that it was in the child’s best interest to terminate her biological mother’s parental rights. Without specificity or definition, the court noted that “the child’s mother’s **“chronic substance abuse”** (emphasis added) problem led to

the removal of the child from the home and that respondent failed to take corrective measures with respect thereto.” The dissenting judge noted that the Family Court’s decision was based solely upon the respondent’s admitted failure to abstain **completely** from the use of marijuana (emphasis added). The dissent further noted that the child’s mother satisfied virtually every other requirement contained in the agreement to work towards reunification with her child, including ongoing visitation, psychological evaluation, mental health counseling, parenting classes, anger management program, securing a source of income, and suitable housing. Moreover, the child’s mother enrolled in an inpatient substance abuse program and later an outpatient program. Lastly, the dissenting judge noted that, given the progress made, the court should have granted a suspended judgment, allowing the respondent the opportunity to overcome the only remaining obstacle to the child’s safe return to her custody. Despite the biological parent’s continued effort to maintain custody and satisfy the majority of

the contract and service plan, the court nevertheless held that it was in the child's best interest to terminate parental rights based on continued and ongoing drug use. It seems clear that these other factors, without a complete termination of drug use, were not enough for the mother to maintain her parental rights and that her continued drug use in and of itself was enough for the court to terminate parental rights in the best interest of the child.

In another case, *In re Amani T.*, 33 A.D.3d 542, 542, 822 N.Y.S.2d 540, 541 (2006), the court provides further insight into the definition of "chronic" when describing substance abuse and the termination of parental rights. In this case, the court held that there was sufficient evidence to support a finding of permanent neglect based on the mother's frequent missed visits or lateness, and failure to plan for the children's future by "chronically falling back into substance abuse," despite the agency's efforts to refer her to drug treatment programs. The mother's incarceration did not relieve her of her obligation to plan for the children's future.

Based on the above factors, her parental rights were terminated.

The court in *In re Alexander M.*, 106 A.D.3d 1524, 964 N.Y.S.2d 445 (2013), held that the father's "negligible progress in addressing his chronic substance abuse" was not sufficient to warrant any further prolongation of the child's unsettled familial status." In this and similar cases, the court considered whether the child was settled in their living situation and whether or not the progress a parent made in terms of addressing their substance abuse issues warranted a prolonged unsettled familiar status for the child.

It appears that, unless the parent's progress is great, courts are reluctant to risk the child's living situation continuing to be highly unsettled and may terminate parental rights. We can infer from the above cases that when a parent does cease drug use for an undetermined time period, seeks treatment, shows an interest in reunification and caring for the child, and creates a viable plan for the child, substance abuse is not

deemed “chronic,” and parental rights are generally not terminated as a result.

Although there is no one clear, uniform definition for chronic substance abuse, the above factors do provide some – albeit limited – insight into how the courts view this very significant and complicated issue.

Conclusion

As chronic substance abuse continues, it can affect every aspect of a person’s life, including their ability to properly parent.

Every day, Child Protective Services faces a dilemma: Parents have a fundamental right to make decisions regarding the care, custody, and control of their children (*Troxel v. Granville*, 530 U.S. 57 (2000)) and the government’s interference with fundamental constitutional rights is subject to strict scrutiny.

Infringement is permissible only by showing that the restriction is necessary to promote a compelling state interest, and this interest must be served in the least restrictive manner possible. This being the case, states should make

greater efforts to identify specific elements and criteria for terminating parental rights based upon a parent having chronic substance abuse issues.

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