Wyoming Dependency Docket 2010

By Toni Britton, Wyoming GAL Program Extern, Summer 2010

TERMINATION OF PARENTAL RIGHTS

- **INCARCERATION: STATE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT PARENT WAS UNFIT FOR CUSTODY AND CONTROL OF CHILD**

  IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO L.A.: RLA v. DEP'T OF FAMILY SERVICES, 2009 WY 109, 215 P.3d 266, (Wyo. 2009).

Father appealed from the District Court of Sweetwater County's order terminating his parental rights. The Wyoming Supreme Court affirmed the district court's decision.

Child was taken into custody on November 25, 2006 after testing positive for methamphetamine at birth. Mother shortly thereafter relinquished her rights to Child. DFS prepared a case plan for Father with the permanency goal of family reunification, which required Father to provide a copy of his drug and alcohol evaluation and comply with its recommendations, complete a parenting class and attend regular visitation with the Child after having clean UAs.

After two separate periods of incarceration of Father, DFS filed a petition to terminate Father's parental rights under two grounds§ 14-2-309(a): 1) Father was incarcerated on a felony conviction and was unfit to have care and custody of Child under subsection (iv); and 2) Child had been in foster care for fifteen of the most recent twenty-two months and father was unfit under section (v). DFS also worked with Father to developed a concurrent plan of family reunification.

DFS facilitated visitation by transporting Child to the penitentiary in March 2008, when Child was approximately sixteen months old and had not seen Father for almost eleven months. During this and subsequent visitation at the penitentiary, Father showed no emotional attachment to Child, little or no interest in Child's health, nor affection for the Child. The district court held a hearing on the termination petition on July 11, 2008.

DFS presented evidence that Father did not have an emotional bond with Child, that Father had an on-going drug problem, that Father had a significant criminal history, that he continually declined opportunities to visit with Child and offered to relinquish his parental rights to secure more lenient treatment in his criminal case, as well as his refusal to comply with many of the provisions established by DFS in the case plan to develop his child rearing skills. Father argued that his non-compliance with many of the case plan requirements was due to his incarceration. The evidence did not bear this out and the district court noted that it did not find him to be a credible witness.

The district court found by clear and convincing evidence that Father had very limited contact with Child during Child's life, made little effort to develop a relationship with him, did not improve his parenting skills as outlined in the case plan or otherwise, and did not have the present ability to provide for the on-going physical, mental and emotional needs of the child. Therefore, the Court ordered termination of Father's parental rights based upon his incarceration and unfitness to have custody and control of the Child.

The Wyoming Supreme Court affirmed the district court's decision based on the clear and convincing standard for evidence presented in the case.

> *IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO AE AND DE, MINOR CHILDREN: JD AND SE V. STATE OF WYOMING, DEP'T OF FAMILY SERVS.*, 2009 WY 78, 208 P.3d 1323 (Wyo. 2009).

Mother and Father appeal from the district court's termination of their parental right with their two minor children. Both parents are incarcerated for felony convictions relating to the possession, manufacture, and delivery of methamphetamine as well as the manufacture of methamphetamine in the presence of the children.

A welfare check was initiated by DFS and performed by the Casper Police Department on April 5, 2005 when DFS received an anonymous phone call indicating that Mother and Father were selling drugs from their home and that the home was filthy. The officer who responded took the children into protective custody. Accordingly the three-year –old girl and two-year-old boy were removed from the home, the parents arrested and a petition for child neglect was filed in district court. Mother and Father later admitted to the neglect. Pending the outcome of the criminal charges against Mother and Father, DFS' case plan had a goal of family reunification and a concurrent plan of placement of the children with relatives or other appropriate persons.

On January 4, 2006, Mother and Father were both convicted and sentenced to two to six years and five to twelve years imprisonment, respectively. The district court convened a dispositional hearing on January 12, 2006 and concluded that reunification was no longer a realistic goal and changed the permanency plan to adoption. DFS filed a petition to terminate parental rights on April 12, 2006. The hearing was held on March 31, 2008, wherein the trial court concluded that DFS had established by clear and convincing evidence that Mother's and Father's parental rights should be terminated. Both parents appealed.

It is undisputed that both Mother and Father were incarcerated as a result of felony convictions. Incarceration, by itself, is insufficient to establish that a person is unfit as a parent.[1] Mother and Father argue that in determining their fitness to have custody and control of their children, the statute requires the state to establish by clear and convincing evidence that each is unfit at the time of the hearing, not at the time the children were removed. They further argue that in

[1] *In re JLP*, 774 P.2d 624, 630 (Wyo. 1989); *In re FM*, 2007 WY 128, p16, 163 P.3d 844, 849 (Wyo. 2007)

terminating their rights, the district court focused on their fitness as parents at the time when the children were removed by DFS and they were arrested.

The court says that "evidence of past behavior is plainly relevant in determining current parental fitness" and concludes that the evidence concerning their past parenting behavior demonstrates clearly and convincingly that Mother and Father were unfit. Convictions for crimes involving harm to or endangerment of children are strongly indicative that the parents are unfit to have custody and control of their children.[2] The evidence as to their current fitness indicates that although the parents' completed parenting classes, attended drug addiction therapy sessions, and participated in classes, programs and education, these efforts resulted in little gain or "insight into parenting and [they] have not acquired the tools to parent." Together, this evidence provided the district court with clear and convincing proof that Mother and Father are unfit and their parental rights were properly terminated. The Wyoming Supreme Court affirmed the decision of the district court.

- **EVIDENCE: THE DISTRICT COURT'S FINDINGS, IF SUPPORTED BY EVIDENCE IN THE RECORD, ARE SUBJECT TO STRICT SCRUTINY WHEN CONSIDERING A PETITION TO TERMINATE PARENTAL RIGHTS; THE STATE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT RETURNING CHILDREN TO THE PARENT WOULD BE A RISK TO THEIR HEALTH OR SAFETY, OR THAT THE PARENT IS UNFIT.**

  IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO: ATE, KOE, ETE, ME, FTE, DEP'T OF FAMILY SERVICES v. TWE, III, 2009 WY 155, 222 P.3d 142, 215 P.3d 266 (Wyo. 2009).

DFS appealed the District Court of Campbell County's denial of its petition to terminate the parental rights of Father. The Wyoming Supreme Court upheld the district court's decision.

Father is the biological parent of five minor children, who were removed from the home of Mother and Father in May 2005 following an investigation for an extremely dirty home and one of the children having significant and ongoing dental problems. Mother and Father were charged with and admitted to allegations of neglect in June 2005.

DFS began working with Mother and Father toward a plan of reunification for the family. During this time, Mother and Father decided to separate. Eventually, Mother left the State of Wyoming and her parental rights were terminated. Mother did not appeal and her parental rights are not at issue in this case. Father worked with a succession of case workers over the next two years. Father's use of marijuana continued to be an issue with both the workers and the court. Father was twice cited by the juvenile court for criminal contempt related to his use of marijuana, as evidenced by "all or nearly all" of his UAs testing positive for marijuana. Additionally, Father's efforts toward the reunification plan were intermittent and seemingly dependent on his relationship with the current case worker.

[2] *CDB v DJE*, 2005 WY 102, p 7, 118 P.3d 439,441 (Wyo. 2005).

In January of 2009, the district court held a three-day bench trial on the petition to terminate Father's parental rights pursuant to two statutory subsections.[3] The children remained in foster care and DFS planned to place them in an adoptive home. Father opposed the petition for termination of his rights. He denied that DFS had made "reasonable efforts toward rehabilitating his family," and that "he had refused rehabilitative treatment." He further asserted that "the children's health and safety would not be jeopardized if they were returned to him."

DFS presented undisputed evidence that the agency had offered Father and his children numerous rehabilitative services. The evidence suggests that DFS made reasonable efforts to rehabilitate the family and that Father refused rehabilitative treatment by failing to take advantage of the offered services.

Father's use of marijuana had been an issue since December of 2005 and DFS consistently denied him visitation with the children when his UAs came back with a positive result. Consequently, his visits with the children became sporadic and he had no contact with the children for substantial periods of time. This was contrary to previous court orders regarding visitation, which only allowed denial of visitation for "reasonable cause to believe [he was] under the influence" of alcohol or a controlled substance. Evidence was presented that indicated that a positive UA does not necessarily indicate that the donor is currently under the influence. Father was further discouraged from pursuing visitation by being led to believe he would be cited for possession of marijuana if he had a positive UA.

The district court concluded that "what had started as a case about ensuring [that the] children had a clean, safe environment with appropriate medical, dental and other care had become a case about whether [Father] wanted to be with his children enough to stop using marijuana." The court was clear about its condemnation of Father's drug use, yet reluctantly admitted that the initial reason for DFS involvement with the family was not related to [Father's] marijuana use. The district court concluded that the State had not proven with clear and convincing evidence that returning the children to Father would be a risk to their health or safety. The Wyoming Supreme Court deferred to the district court's finding of fact and elected not to disturb its decision on the first ground for termination of Father's parental rights.

The second statutory subsection under which DFS sought termination of Father's parental rights requires clear and convincing evidence that the parent is unfit to have custody and control of the child.[4] Although it was undisputed that Father's children were in foster care longer than the

---

[3] Wyo. Stat. Ann. § 14-2-309 states in part:

> (a) The parent-child legal relationship may be terminated if any one (1) or more of the following facts is established by clear and convincing evidence….
>
> (iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child's health and safety would be seriously jeopardized by remaining with or returning to the parent[.]
>
> (v) The child has been in foster care under the responsibility of the state of Wyoming for fifteen (15) of the most recent twenty-two (22) months, and a showing that the parent is unfit to have custody and control of the child[.]

[4] Wyo. Stat. Ann. § 14-2-309(a)(v)

required fifteen months, DFS failed to provide evidence that Father's use of marijuana was connected with his unfitness as a parent. The initial reason DFS became involved with the family was unrelated to Father's use of marijuana, but rather with the living conditions and inappropriate medical/dental care for the children. The district court did not condone Father's illegal use of marijuana, but admitted that it was irrelevant to whether the government made "consistent, reasonable efforts" to reunify the family. "Drug use may cause a parent to be unfit, but the evidence in this case does not support such a finding by the court under the clear and convincing standard." The Wyoming Supreme Court affirmed the district court's decision accordingly.

GUARDIANSHIP

- **RELATIVE PLACEMENT: THERE IS A COMPELLING PREFERENCE THAT WHAT IS "BEST" FOR A CHILD IN A PERMANENCY HEARING IS PLACEMENT WITH NUCLEAR OR EXTENDED FAMILY MEMBERS**

  IN THE INTEREST OF: JW AND BJ, JR., MINOR CHILDREN; LW V. THE STATE OF WYOMING, DEP'T OF FAMILY SERVICES, 2010 WY 28; 226 P.3d 873 (Wyo. 2010)

Mother appeals from the district court's order permanently placing her two children with the foster parents and eliminating qualified, appropriate Uncle and Aunt as the kinship placement. On May 9, 2007, a neglect petition was filed against Mother in juvenile court regarding then six-year-old Daughter and newborn Son. Mother admitted the neglect allegations and on August 8, 2007, the parties entered into a consent decree. DFS continued to work with Mother toward reunification. The Children's grandmother's home was assessed as a potential interim placement for the children, and although suitable, Mother objected on the basis that her mother had history of alcohol abuse. Mother had early on identified "Uncle Levi" as a potential relative placement for the children and the "Family Service Plan" indicated a concurrent plan for the children with him.

Mother underwent in-patient treatment for her drinking problems which caused the case plan's progress to be very slow. She eventually relapsed and returning to drinking alcohol as well as violated other terms of the case plan with DFS for reunification. On April 8, 2008, the State and DFS sought to reinstate the original neglect petition and reinstate proceedings to terminate Mother's parental rights. The April 18, 2008 MDT report recommended that the "concurrent plan of other relative placement be adopted." The court accepted this recommendation and the matter was directed to proceed to a permanency hearing.

Four or five successive caseworkers had responsibility for this case over the period from intake to permanency. The kinship placement contingent plan seems to have been largely forgotten about by DFS workers due to oversight, inconsistent responsibility and the distance between Casper and Uncle and Aunt's home in Miles City, Montana.

The MDT recommended on August 8, 2008 that that the foster parents be granted guardianship of the children and initial efforts began to certify Uncle and Aunt as a family placement. Uncle

and Aunt filed an affidavit outlining their association with the children and a "bonding study" was ordered at Mother's request. Uncle and Aunt were permitted to intervene in the case as of November 14, 2008 for the limited purpose of participating in the permanency hearing, during which the district court continued placement of the children with the foster parents. The district court reasoned that this placement was appropriate over the family placement in Miles City, Montana because by the time the Mother's reunification work in Casper ended in failure, it was not feasible to place the children with Uncle and Aunt due to the geographical distance between Casper and Miles City. The court also concluded that Uncle and Aunt's bond with Daughter had been interrupted for nearly two years and they had not developed a bond with Son at all.

In the Supreme Court case, both the state and the GAL challenged Mother's standing to appeal. The Court concluded that Mother did have standing as she still retained "residual parental rights" prior to termination of her parental rights, which included the right to consent to adoption.[5] The Court found that the standard of review "is difficult to pinpoint" in this case because of a "convergence of issues of constitutional magnitude as well as clear expressions of legislative intent."

The Court reversed the district court's decision to place the children with the foster parents, finding that based upon tradition, federal law and Wyoming law, a preference exists that what is "best" for the child in circumstances like those in this case, is placement with nuclear or extended family. It reasoned that "tools, resources and an Interstate Compact on the Placement of Children (ICPC) are available to achieve" placement with relatives residing at a distance.

Justices Golden and Burke dissented, on the issues of both Mother's standing and the reversal of the district court's order placing Children with foster parents. Justice Golden's dissent asserts that Mother's right to familial association is not at issue in this appeal, therefore she does not have standing to present arguments on behalf of Uncle and Aunt's right, if any, to familial association. Wyoming has never recognized an uncategorical constitutional right to familial association by extended relatives and the dissent suggests that doing so here has profound implications.

The dissent further charges that reversal of the district court's order goes against Wyoming's legislative mandates as expressed in the Child Protection Act, which requires the juvenile court to review permanent placement plans to ensure they are in the best interests of the children involved.[6] The district court held a hearing to determine which placement would be in the children's best interests. Ultimately, the court decided that all the factors did not weigh evenly between the two placements, and the best interest lay with the Foster Parent placement. The dissent concludes that nothing in the record allows a finding that the lower court erred in its determination.

Justice Burke focuses his dissent on the standard of review, which the majority discusses only as "difficult to pinpoint." The dissent identifies the standard as abuse of discretion, which the majority neither recognizes nor applies. Had the majority applied this standard, the dissent argues, it would not have concluded that reversal was warranted. Reversal should be limited to

[5] Wyo. Stat. Ann. § 14-3-402(a)(xvi)(B)
[6] Wyo. Stat. Ann. § 14-3-431(k).

when there has been an abuse of discretion. It charges that the majority "ignored evidence favoring the court's determination and emphasized the evidence favoring placement with relatives," ignoring the fact that the relatives who were intervening parties in the action, did not appeal the court's decision. The dissent finds no abuse of discretion, and therefore, no cause for reversal.

- **GUARDIANSHIP STATUTES MANDATE THAT THE DISTRICT COURT PROTECT THE CHILDREN'S BEST INTERESTS**

  IN THE INTEREST OF DMW AND ALW, MINORS: AW AND LW V. TLW, 2009 WY 106, 214 P.3d 996 (Wyo. 2009).

Grandparents (AW and LW) appeal from the district court's order granting permanent guardianship and conservatorship of DMW and ALW (the Boys) to TLW (Stepmother). Grandparents claim the district court erred in failing to give priority to Grandparents as guardians for the boys based upon Father's written statement giving the grandfather custody of them and that the court did not act in the Boys best interests when it awarded guardianship to Stepmother.

The Boys' parents never married. Biological mother had custody of the boys and they lived with her in Ohio until the summer of 2005, when she faced an action by the Ohio Family Services Agency because of violence in the home. The Boys then lived with Father and Stepmother, who were living together but not married, in Ohio and began counseling. Father and Stepmother married in January 2006 and then moved with the Boys and Stepsister (Stepmother's daughter from a previous relationship) to Thermopolis in the spring of 2006, where Father had secured a job. The Boys began school and counseling in Thermopolis.

Stepmother engaged in an extramarital affair in 2007, and upon learning of it, Father and the Boys returned to Ohio on July 3, 2007, where they stayed with Grandparents. Father was killed in an automobile accident on July 18, 2007. On July 19, 2007, Stepmother petitioned for temporary and permanent guardianship of the Boys, which was awarded by the district court. Stepmother filed the Wyoming order in Ohio. She went to Ohio for Father's services and to pick up the boys, returning to Wyoming, where the Boys have lived with her since.

Biological Mother and Grandparents were formally served with the guardianship documents on August 10, 2007 and given notice of the hearing on Stepmother's guardianship petition to be held on September 28, 2007. Biological Mother filed a motion to terminate Stepmother's temporary guardianship of the Boys, Grandparents filed a motion to intervene and sought to be appointed as co-guardians of the Boys. The September 28, 2007 hearing was partially completed but continued until April 17 and 18, 2008. A GAL was appointed in the meantime.

After the hearing concluded in April 2008, the district court issued a decision letter and order with the following findings: Biological Mother was not fit to parent the Boys, a guardian needed to be appointed and it was in the Boys' best interest to appoint Stepmother as their guardian. Mother did not appeal the district court's order, but Grandparents did.

Grandparents submitted a handwritten, notarized document signed by Father on July 3, 2007, in which he gave temporary custody of the Boys to the grandfather. The district court did consider the document although it was not technically a will, but ultimately was not bound by it. The court "shall appoint the person who is best qualified and willing to serve as guardian."[7]

The district court may appoint a guardian for a proposed minor ward when the "necessity for the appointment of a guardian" has been "prove[n] by the preponderance of the evidence."[8] The district court determined that Biological Mother was unfit, and because the Father was deceased, the Boys needed a guardian. The "best interests of the children" is the touchstone in awarding guardianship according to both statute and case law.[9] Applying the "clearly erroneous" standard of review, the supreme court declined to set aside the district court's findings as there was ample evidence in the record to support those findings. The supreme court affirmed the district court's conclusion that appointing Stepmother as guardian was in the Boys' best interest.

- **EVIDENCE: IN NEGLECT PROCEEDINGS, THE STATE HAS THE BURDEN OF PROVING THE ALLEGATIONS BY A PREPONDERANCE OF THE EVIDENCE; THE PREPONDERANCE OF THE EVIDENCE STANDARD ALSO APPLIES TO THE JUVENILE COURT'S DETERMINATIONS THAT REUNIFICATION EFFORTS HAVE NOT BEEN SUCCESSFUL**

  IN THE INTEREST OF NDP, JAP, ANP AND ICP, MINOR CHILDREN, CP, V. THE STATEOF WYOMING, DEP'T OF FAMILY SERVICES, 2009 WY 73, 208 P.3d 614 (Wyo. 2009).

Mother appeals from the juvenile court's disposition order after she was found to have neglected her children. She claims the court erred by ruling that DFS did not need to make further efforts to reunify her with her children and ordering it to proceed with establishing a kinship guardianship.

Mother had four minor children, ages 13, 12, 7 and 5 when they were taken into custody on April 19, 2007 after Mother was arrested for violating her probation by testing positive for methamphetamine use. The state alleged neglect and the children were placed in foster care with their maternal aunt. The family case plan identified family reunification as the permanency goal. This plan required Mother to: (1) attend to her substance abuse needs; and (2) attend to her mental health needs. Reunification was always contingent upon these requirements.

Mother admitted the neglect allegations, but the "finding of neglect was held in abeyance pending her compliance with the consent decree." Her responsibilities for the substance abuse treatment and a psychological evaluation were in the DFS case plan, the MDT report which her attorney signed, and reiterated to Mother in a July 20, 2007 predisposition report. After failing her initial substance abuse treatment attempt, Mother's probation was revoked and she was incarcerated until October 2, 2007.

[7] Wyo. Stat. Ann § 3-2-107(e)
[8] Wyo. Stat. Ann. § 3-2-104(a)
[9] *AKA v. GS (In re Guardianship of BJO)*, 2007 WY 135, ¶13, 165 P.3d 442, 445 (Wyo. 2007).

A new case plan dated October 5, 2007 required Mother to complete an inpatient drug treatment program. Mother was discharged from the inpatient program she was enrolled in by program staff request without completing the program on November 13, 2007. The State's request to revoke the consent decree and enter the Mother's neglect admission was granted by the court on December 5, 2007 due to Mother's noncompliance with the case plan. A third family services case plan with the goal of reunification was entered into on March 24, 2008, with substantially similar requirements for Mother. On May 20, 2008, the juvenile court held a dispositional hearing, and found that the State had made reasonable efforts to reunite Mother and her children, but those efforts were unsuccessful. The court then ordered the permanency plan changed to establishing a kinship guardianship for the children. Mother appealed the dispositional order.

The State has the burden of proving the allegations by a preponderance of the evidence in both juvenile court adjudications[10] and juvenile court determinations that reunification efforts have been unsuccessful and it is appropriate to proceed with an out of home placement plan in accordance with a permanency plan other than reunification.[11] Although the juvenile court did not specifically identify the standard of proof, it is evident to the court from the record that the juvenile court applied this standard. Mother did not provide the court with any "statute or case law requiring the juvenile court to explicitly state the standard of proof at a dispositional hearing." Further, reversal of a juvenile court's ruling on the basis of a violation of a legal requirement necessitates a showing of prejudice to the appellant.[12] The court ruled that Mother was not prejudiced by the juvenile court's failure to state of the standard of review because, based on the evidence in the record, the State had proven its case by a preponderance of the evidence, which was sufficient to support the juvenile court's findings. The court affirmed the juvenile court's order.

CONTEMPT ARISING FROM JUVENILE COURT

- **DUE PROCESS: ALL DUE PROCESS RIGHTS MANDATED BY LAW MUST BE GRANTED TO PARTIES IN A JUVENILE COURT ACTION ACCUSED OF CONTEMPT; CONTEMPT PROCEEDINGS ARISING FROM JUVENILE COURT MUST BE CONDUCTED AS AN INDEPENDENT CRIMINAL ACTION APART FROM UNDERLYING JUVENILE CASE**

  IN THE INTEREST OF BD, JW AND CW: BW v. THE STATE OF WYOMING, 2010 WY 18, 226 P.3d 272, (Wyo. 2010).

Father appeals from an indirect criminal contempt action against him in the District Court of Campbell County for violation of its order in a neglect proceeding and sentence to a term of incarceration in county jail. The Wyoming Supreme Court vacated Father's criminal contempt conviction.

[10] *AA v. Wyo. Dep't of Family Servs. (In re HP)*, 2004 WY 82, p.25, 93 P.3d 982, 989 (Wyo.2004); *DH v. Wyo. Dep't of Family Servs. (In re: "H" Children)*, 2003 WY 155, p.39, 79 P.3d 997, 1008 (Wyo. 2003).
[11] *AA*, pp.25-31, 93 P.3d at 989-91.
[12] *DH*, p.24, 79 P.3d at 1003.

On November 1, 2006, an adjudication of neglect was entered against Father for not providing adequate care necessary for the well-being of his minor children. When Father failed to satisfy "certain requirements" (which are unspecified in the Supreme Court case) within a particular period of time, the State filed an Information in the underlying juvenile neglect case charging Father with indirect criminal contempt, alleging he had failed to comply with the juvenile court's order. The juvenile court held a bench trial on June 26, 2008, and found Father in indirect criminal contempt, sentencing him to ninety days incarceration in the county jail.

A court imposing criminal contempt sanctions must comply with due process safeguards because of the punitive character of the proceeding.[13] Aside from compliance with the due process mandates of W.R.Cr.P. 42, a proceeding in indirect criminal contempt must be instituted and conducted as a separate and independent criminal action apart from the original cause in which the contempt occurred.[14] Failure to adhere to the separate and independent action rule amounts to a fatal jurisdictional defect, rendering any judgment of contempt null and void.[15] The contempt proceeding against Father in this case was not conducted separate and independently from the underlying juvenile case, thus the juvenile court never acquired jurisdiction. Accordingly, the Wyoming Supreme Court vacated the juvenile court's criminal judgment and sentence against Father.

[13] Rule 42 of W.R.Cr.P. distinguishes between contempt committed in the presence of the court (direct contempt), which may be summarily punished, and contempt occurring outside the court's presence and personal knowledge (indirect contempt), which may be punished only upon notice and hearing.

[14] *Swain v. State,* 2009 WY 142, ¶¶ 15-17, 220 P.3d 504, 508-09 (Wyo. 2009); *UMWA, Local 1972 v. Decker Coal Co.*, 774 P.2d 1274, 1284 (Wyo. 1989); *Garber v. United Mine Workers of America,* 524 P.2d 578, 579-80 (Wyo. 1974).

[15] *Swain*