

## UPDATED CASELAW FROM THE LITIGANTS' PERSPECTIVE

**Hosted by:**

Tennessee Administrative Office of the Courts

**Presented by:**

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## JUVENILE COURT UPDATES

- New definition of “knowing” in severe abuse???
- Forcing a child to testify
- Intervention by DCS in a private party adoption
- Proof of Expenses necessary in an abandonment case
- Does Marijuana = severe abuse?
- What does “diligent” mean when trying to find a parent?
- Bad experts and bad foster parents in a TPR case
- Which Best Interest Factors are we supposed to use?
- Failure to manifest MUST have finding of substantial risk

## JUVENILE COURT UPDATES

- Once Severe Abuse...always severe abuse
- Insufficient Findings and/or analysis = Reversal
- Legal Standard in Grandparent vs. Father
- Using Specificity to attack Severe Abuse
- Guardianship...undocumented immigrants...and birthdays
- Abandonment when a no-contact order issued
- Seeking less drastic alternative during TPR
- In Camera Testimony of Child
- Proving Grandparent Visitation is Hard!

## JUVENILE COURT UPDATES

- Deficient Brief does not mean dismissed appeal
- Insufficient analysis = reversal
- Can you disqualify an attorney?
- How to overcome abandonment for failure to provide suitable home
- Which best interest factors are we supposed to use?
- Implied consent to grounds in TPR
- Overcoming persistence of conditions ground
- Incarcerated parent as a defense
- Deviation from child support guidelines when determining retroactive support

## JUVENILE COURT UPDATES

- Make an offer of proof or waive the issue on appeal
- GAL may ask for fees on appeal
- Effects of a non-suit for purpose of attorney fees
- Green v. Green cited again

## JUVENILE COURT UPDATES JUNE 1, 2022 – FEBRUARY 24, 2023

- 205 cases involving juvenile court
- 121 cases involving termination of parental rights
- Most common ground for reversal: failure to provide sufficient record / analysis for appeal
  - Since June 1, 2022, COA found 22 cases did not provide proper findings of fact / conclusions of law
- Second most common ground for reversal: using wrong best interest factors (3 cases)
- Most common mistake by appellants: failure to provide record

## TENNESSEE SUPREME COURT CASES

### JUVENILE JUSTICE CASE LAW UPDATE: *IN RE MARKUS E.*, 2023 Tenn. LEXIS 16 (May 19, 2023)

**Facts:** TPR filed for severe abuse due to 21 rib fractures in infant child with no explanation. Trial court found either mom did it or dad did it, but we don't know which one.

Both parents ordered to undergo mental health evaluations under permanency plans. Mother fails to disclose her mental health evaluation during discovery and instead produces it on day 3 of a 17 day trial. Trial court excludes due to failure to disclose under local rule and finds substantial non-compliance and terminates.

**Oral Arguments held September 28: Supreme Court spent majority of time asking about terminating rights when we don't know which parent committed abuse**

- Parent's Attorneys: Will this be a new defense for severe abuse cases when both parents point the finger?
- GAL: Must establish that both parents had means, motive, & opportunity to commit abuse.

JUVENILE JUSTICE CASE LAW UPDATE:  
*IN RE MARKUS E.*, 2022 Tenn. LEXIS 92  
 (March 23, 2022)

**Definition of Knowing:** when the respondent parent has actual knowledge of the relevant facts and circumstances or when he or she is either in deliberate ignorance of or in reckless disregard of the information that has been presented to him or her.

- relevant facts, circumstances, or information would alert a reasonable parent to take affirmative action to protect the child.
- Deliberate ignorance: when the parent has specific reason to know, but deliberately ignore the facts
- Must now show BOTH PARENTS were aware of facts, circumstances or information that would alert a reasonable parent to take affirmative action

Parents testified that they heard a crackling sound prior to taking the child to the doctor's office and trial court found parents not credible.

Child had multiple physical issues before taking to the hospital; therefore, parents were not aware of injury

Medical Expert testified that a child with rib fractures would be fussy, but the parents could not know about rib fractures



JUVENILE JUSTICE CASE LAW UPDATE:  
*IN RE MARKUS E.*, 2022 Tenn. LEXIS 92  
 (March 23, 2022)

**“Aftermath:” (this is actually what the Supreme Court called it)**

- (1) Does this mean the severe abuse finding in the d/n matter is reversed as a matter of law?
- (2) Dependency & Neglect does not require a specific “knowing” state of mind on the part of the parent or custodian per Supreme Court
- (3) In d/n matters, do we now have the same burden as in TPR to identify the perpetrator?
- (4) What about the second definition of severe abuse involving expert witness testimony which requires “knowing failure to protect a child from such conduct”



JUVENILE JUSTICE CASE LAW UPDATE:  
*IN RE MARKUS E.*, 2022 Tenn. LEXIS 92  
(March 23, 2022)

Ultimate Question: What did they know and when did they know it?

**Parent's Attorneys:**

Must focus on timeline and showing that only medical expert could determine that child was injured; when questioning doctor, you must show how a child would react with injury and whether untrained layperson could know about fracture; focus on 7-14 day time period for acute fractures

**GAL:**

Must delve into credibility of parents and whether their timeline matches what was said at initial meeting with Care team doctor. If it doesn't match, you must still show some fact that BOTH parents would have known of injury and what information they possessed



TENNESSEE COURT OF APPEALS  
CASES



JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Kansas B.*, 2022 Tenn. App. LEXIS 393  
 (Tenn. Ct. App. Oct. 12, 2022)

**Facts:** Severe abuse cases involving sexual abuse of a small child by step-father. Forensic interview extremely good. Step-Father subpoenas child to testify believing child has been coached. GAL files Motion to Quash and trial court grants motion stating child's testimony will not make a difference and finds severe abuse.

**Court of Appeals reverses finding father has a right to present witnesses; however, trial court must determine whether child is capable of testifying and may utilize mechanisms to protect child under rules.**

- Parent's Attorneys: If there is a possibility to show that the child is not credible, this is your chance.
- GAL: The rules specifically state mechanisms to use for the child's testimony to protect the child. Use them.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Aiden W.L.*, 2022 Tenn. App. LEXIS 483  
 (Tenn. Ct. App. Dec. 15, 2022).

**Facts:** Custody battle between unmarried parents over child. Child was in counseling and GAL advocated that child's testimony would be traumatizing to child. Therefore, Court found child's preference was not applicable to the best interest determination and child's testimony was not necessary. Father granted custody and mother appeals.

**Court of Appeals upholds. No statement of evidence or transcript was filed; therefore, COA falls to discretion of trial court. Trial court entered good order with remaining factors showing why it ruled.**

- Parent's Attorneys: Even if the child is against you, the remaining factors may support your position.
- GAL: In material change petitions, you may wish to determine if it is in the best interest of the child to testify. If not, you need to argue such.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Lorelai E.*, 2022 Tenn. App. LEXIS 496  
 (Tenn. Ct. App. Dec. 28, 2022)

**Facts:** DCS files petition for severe abuse in juvenile court and juvenile court makes finding of severe abuse. Child placed with non-family caregiver. Parents appeal and non-family caregiver files Adoption. DCS files Motion to Intervene. Court grants motion.

**Rule:** COA finds that trial court has discretion to allow DCS to intervene in the adoption action due to the similar issues between the d/n and adoption matter. The question remains whether DCS will be allowed to act as a party for adjudication or whether they will only be allowed to present best interest testimony.

- **Parent's Attorneys:** If DCS does not file their own petition, are they limited to best interest only under 36-1-116(k)(1)
- **GAL:** Sometimes private parties may not be able to afford expert witnesses to testify in adoption proceedings. This may be an opportunity to obtain help.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In Stephen H.*, 2022 Tenn. App. LEXIS 494  
 (Dec. 22, 2022)

**Facts:** In a TPR proceeding, the Department failed to provide evidence regarding father's expenses during the relevant four month period prior to the petition.

**Court of Appeals reverses abandonment ground finding that petitioner must show income and expenses of respondent in order to show abandonment. Note that this petition was filed September 8, 2021. COA further agreed that father waived right to argue affirmative defense due to not filing an Answer; however, burden still lies on DCS to prove facts.**

- **Parent's Attorneys:** You must file an Answer in abandonment cases or you will lose right to argue affirmative defense of inability to pay
- **GAL:** You must inquire of the respondent regarding their income and expenses on the record so that you can show the parent had the ability to pay



JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Lucas L.*, 2022 Tenn. App. LEXIS 256  
 (Tenn. Ct. App. July 5, 2022)

**Facts:** Child born positive for THC and D/N allegations brought against father without expert proof. Child deemed severely abused and BOTH father and mother deemed perpetrators. Father appeals claiming marijuana is not a serious enough drug for a severe abuse finding due to its different schedule compared to other drugs.

**Court of Appeals upholds finding expert testimony not necessary again finding that healthy development of child does not diminish the severity of harm exposed to the child.**

- Parent's Attorneys: If this is the first case, you need to try and settle the case without a severe abuse finding.
- GAL: Push for severe abuse even if this is the first case. In this case, the father had another unrelated child that was removed.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Jimmy H.*, 2023 Tenn. App. LEXIS 52  
 (Tenn. Ct. App. Feb. 10, 2023)

**Facts:** DCS files petition for termination against mother, but fails to serve her. Instead, they file a form affidavit of diligent search and do publication. Trial goes forward and mom's rights are terminated. A few months later, mom writes a letter to the Court of Appeals stating she was in prison and she wants an attorney.

**COA Reverses. Diligent search requires more than merely filling out a form affidavit. If there is information related to mother's whereabouts, the Department must do further investigation.**

- Parent's Attorneys: Review the technical record on appeal and determine whether service was acquired. Jurisdiction may be raised at any time.
- GAL: Make record regarding diligent search information available and actions taken. If you don't, the case may come back.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Scarlett F.*, 2022 Tenn. App. LEXIS 363  
 (Sept. 16, 2022)

**Facts:** Child born positive for drugs while mom was staying in a rehabilitation facility. Mother was asked to leave rehab after a few months and relapsed. Child again tested positive for drugs and removed by DCS. Foster parents file petition for TPR. Foster parents called expert who testified that it was in the child's best interest to terminate, but foster parents committed acts preventing bond between mother and child.

**Rule:** This is a great case for admitting severe abuse while overcoming an expert for the petitioner based upon actions of the foster parents and opinions of the expert.

- Parent's Attorneys: Look at the underlying facts which the expert bases their opinion and also look at the wrongful actions committed by the foster parents. Did they prevent a bond?
- GAL: Make sure that the expert knows all the facts and knows how the other side will attack them. If they don't have all the facts, their opinion may be worthless.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Alessa H.*, 2022 Tenn. App. LEXIS 318  
 (Tenn. Ct. App. Aug. 12, 2022)

**Facts:** TPR petition filed on same day new best interest factors go into effect (April 22, 2021). Mother intentionally ignores petition for TPR and ignores her attorney's advise; therefore, default is entered. GAL argues old best interest factors and TPR granted.

**Rule:** COA reverses finding that new best interest factors must be used when analyzing best interest as of April 22, 2021. COA further advised that trial court may, in its discretion, need to reopen proof.

- Parent's Attorneys: There are 20 new factors. You must determine when the petition as filed and which factors to apply. Place emphasis on the factors which assist your client. If the case is reversed, ask to reopen proof.
- GAL: The 20 new factors are extremely pro-child. Speak about them from the child's perspective.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Kamyiah H.*, 2022 Tenn. App. LEXIS  
 418 (Tenn. Ct. App. Nov. 2, 2022)

**Facts:** Mother arrested on multiple counts of felony child abuse due to children testing positive for methamphetamine. Mom violates community corrections and receives 10 year sentence. TPR filed with multiple grounds including failure to manifest ability to assume custody. TPR granted. In its Order, trial court makes specific findings regarding failure to manifest; however, it does not make any findings regarding substantial risk of harm if the child is returned.

**COA reverses failure to manifest ground. COA specifically finds that both elements of ground must be met and trial court must make findings regarding both.**

- **Parent's Attorneys:** On appeal, make sure that all elements are contained in Order. If not, the ground should be reversed.
- **GAL:** Make sure the record contains facts to support all elements of each ground and make sure that judge includes elements in its Order.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Joseph D.*, 2022 Tenn. App. LEXIS 431  
 (Tenn. Ct. App. Nov. 10, 2022)

**Facts:** Mother found to have committed severe abuse against sibling in separate hearing. Another child born after severe abuse finding and child removed based upon d/n due to domestic violence. TPR petition filed and Court uses severe abuse of previous child (among other grounds) as ground for termination.

**Court of Appeals upholds. TCA 36-1-113(g)(4) specifically states that severe abuse may include ANY child and not just the child at issue.**

- **Parent's Attorneys:** This case is a reminder of why you cannot agree to a severe abuse finding. You never know what the future may hold.
- **GAL:** Remember to ask the Department whether the parent has any previous involvement with DCS. If there is a previous severe abuse finding, you may want to consider adding adoption as an initial goal.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Khloe O.*, 2022 Tenn. App. LEXIS 234  
 (Tenn. Ct. App. June 16, 2022)

**Facts:** Adoption petition in which trial court found that petitioners showed mother abandoned child; however, trial court's order failed to provide any specific findings of fact regarding the abandonment or even mention that the abandonment occurred in the 4 months prior to the petition.

**Court of Appeals reverses finding that trial court only provided mere conclusions of law and did not provide any specific findings of fact.**

- Parent's Attorneys: Review the trial court's order very closely—especially if the petitioners are supplying the Order. If the Order only contains conclusions of law, you have a good argument for reversal.
- GAL: Make sure that the Final Order contains specific facts proven during the trial. Also, make sure that the elements are met. You do not want to come back.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Isaiah D.*, 2022 Tenn. App. LEXIS 430  
 (Tenn. Ct. App. Nov. 9, 2022).

**Facts:** Mother and step-father file TPR alleging abandonment. Trial is held and allegations are dismissed. In its Order, trial court enters two paragraphs finding petitioners failed to carry their burden and dismisses petition. Petitioners appeal

**Court of Appeals reverses based upon insufficient findings of fact pursuant to Tenn. Code Ann. 36-1-113(k)**

- Parent's Attorneys: If the Order is less than two pages, you probably have a reversible Order.
- GAL: You must make sure that the Order contains specific findings and conclusions. If not, you will return and it might give the parents a second bite at the apple.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Jayce S.*, 2022 Tenn. App. LEXIS 224  
 (Tenn. Ct. App. June 9, 2022).

**Facts:** Grandparents filed petition for adoption and the trial court granted the petition. The father appealed. Only a statement of the evidence was presented for the COA with no transcript.

**Court of Appeals reverses. COA emphasizes previous statement that “a parental rights termination case where a Statement of the Evidence would be sufficient would be extremely rare.”**

- Parent’s Attorneys: If a court reporter is not present creating a transcript, you have a good chance that the case may be reversed.
- GAL: You must make sure that a court reporter is present and a transcript is created. Without it, you may returning and by that time, the parents may have a better defense.

JUVENILE JUSTICE CASE LAW UPDATE:  
*Boren v. Wade*, 2022 Tenn. App. LEXIS 444  
 (Tenn. Ct. App. Nov. 18, 2022).

**Facts:** Trial court suspends father’s visitation because father will not cooperate with Rule 35 evaluation. Trial court finds a material change has occurred; however, trial court does not provide best interest analysis

**Court of Appeals reverses. Even if a material change has occurred, the court must provide a best interest analysis using the factors in 36-6-106(a).**

- Parent’s Attorneys: Look at the final Order. It must have two elements—material change and best interest. If they are missing, you have an appealable issue.
- GAL: Go through the best interest factors one by one in your closing argument and ask the judge to include that analysis in their final order.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Nash M.*, 2022 Tenn. App. LEXIS 394  
 (Tenn. Ct. App. Oct. 13, 2022)

**Facts:** Parties on appeal of TPR involving severe abuse allegations do not present transcript nor a statement of the evidence.

**Court of Appeals reverses finding that they do not have a sufficient record to provide adequate review. COA specifically states that State may be ordered to provide transcript in private party action.**

- Parent's Attorneys: If there is not a court reporter, there will probably not be a sufficient record. COA has not said statement of evidence is insufficient, but they have come extremely close to saying that it is insufficient.
- GAL: A court reporter must be present for all hearings. If you do not have one, the case will more than likely be reversed and the proof will be reopened.

JUVENILE JUSTICE CASE LAW UPDATE:  
*Jones v. Jones*, 2022 Tenn. App. LEXIS 327  
 (Tenn. Ct. App. Aug. 23, 2022).

**Facts:** Grandparents granted temporary custody. Father files petition to regain custody. Trial court utilizes best interest analysis for material change and grants primary custody to grandparents. Father appeals.

**Court of Appeals reverses finding *Blair v. Badenhope* applies. If custody was merely temporary, parent retains superior parental rights and non-parent must prove substantial risk of harm to children in parent's custody.**

- Parent's Attorneys: When agreeing to a change in custody, make sure that Order reflects that change is temporary in order to preserve superior parental rights.
- GAL: In final Order for adjudication, make sure that Order refers to *Blair v. Badenhope* and states that if the parent has not filed petition for return within specific time, the Order becomes final.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Clara A.*, 2023 Tenn. App. LEXIS 37  
 (Feb. 1, 2023)

**Facts:** Unclosed / unrestrained 3 y/o child is passenger in high speed police chase in which mom stole car and lasted 30 minutes reaching up to 85 mph. Mom pleads guilty to misdemeanor child abuse / neglect / endangerment. Mother raises issue of whether Order should be reversed because trial court did not state which specific severe abuse and also it was a misdemeanor.

**Court of Appeals upholds finding that facts presented show which severe abuse ground was relied upon despite the fact that the judge did not specify. Furthermore, the trial court did not rely solely upon conviction.**

- **Parent's Attorneys:** Findings of fact and conclusions of law must be specific when determining severe abuse. If the record is ambiguous, you may have grounds for appeal. Look at *In re S.S.-G.*, 2015 Tenn. App. LEXIS 917 (Tenn. Ct. App. Nov. 16, 2015)
- **GAI:** In your closing, tell the judge which severe abuse definition you are relying upon. Don't let the parent make that argument.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Jose A.*, 2022 Tenn. App. LEXIS 241  
 (Tenn. Ct. App. June 21, 2022).

**Facts:** Undocumented 17 year old child enters US and is placed with aunt. Aunt files petition to deem child d/n for immigration status. Magistrates enters Order, but does not find child was abandoned. Aunt appeals to judge for de novo hearing. Judge hears case before child turns 18, but enters Order after child turns 18 again not finding abandonment. Aunt appeals.

**COA reverses finding Juvenile Court did not have jurisdiction to enter order after child turned 18.**

- **Parent's Attorneys:** If you delay a case long enough, can you avoid a d/n finding against your client due to jx issues?
- **GAI:** You must ask for a hearing as soon as possible, especially in severe abuse cases. This could have implications on other children.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Connor B.*, 2022 Tenn. App. LEXIS 258  
 (Tenn. Ct. App. July 6, 2022).

**Facts:** Child found d/n due to medical neglect and using smokeless tobacco (dip). During disposition, an injunction is entered preventing mother from having visitation. TPR filed with allegations of failure to visit. TPR granted.

**COA upholds TPR finding that mother had opportunity to file a motion to lift the injunction; therefore, abandonment was proper.**

- Parent's Attorneys: Analyze the Order preventing visitation. If it does not allow conditions for return of visitation, abandonment may be overcome due to lack of willfulness.
- GAL: Make sure that Injunctive Order includes ability to regain visitation. If not, you may not be able to use abandonment as a ground.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Legion S.*, 2022 Tenn. App. LEXIS 450  
 (Tenn. Ct. App. Nov. 22, 2022).

**Facts:** Child is born positive for drugs and taken into DCS custody. Within a few months, DCS files TPR petition. At about the same time, maternal grandparents file Motion to Intervene and Request for Custody. Trial court grants TPR and mother appeals raising the issue of whether DCS should have placed the child into the grandparent's custody prior to the TPR.

**Court of Appeals upholds and finds "DCS is not required under either statutory or case law to make reasonable efforts to reunite children with their extended family prior to terminating a parent's parental rights."**

- Parent's Attorneys: You should still inquire of whether there are less drastic alternatives to state custody with grandparents. This may avoid a TPR finding.
- GAL: This is the second case in which a parent has tried to make this argument in the COA. The issue before the court is termination, not placement.



JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Lyric N.*, 2022 Tenn. App. LEXIS 292  
 (Tenn. Ct. App. July 29, 2022)

**Facts:** TPR petition between paternal aunt and maternal grandmother. During trial, trial court held *in camera* interview with child without counsel or court reporter present and then withheld child's statements until entry of the final order. Trial court uses comparative fitness analysis for determining best interest.

**Court of Appeals reverses finding trial court should have allowed parties an opportunity to present evidence to respond to child's statements.**

- **Parent's Attorneys:** Look at Rule 306 of the Tennessee Rules of Juvenile Procedure regarding child's testimony. If these are not followed, object on the record and prepare the appeal.
- **GAL:** Speak with the child and prepare her/him for testimony. Based upon the attorneys, you may want to only allow written questions and not oral questions.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Houston D.*, 2022 Tenn. App. LEXIS 320  
 (Tenn. Ct. App. Aug 16, 2022).

**Facts:** Child born out of wedlock and for four years, spends several hours per week with grandparents. Parents then marry and prevent grandparents from having visitation. Grandparents file for grandparent visitation. Trial court grants grandparents visitation.

**Court of Appeals upholds juvenile court's finding that juvenile court had jurisdiction due to child born out of wedlock; however, COA reverses finding because grandparents failed to show that the child "suffered any ill effects."**

- **Parent's Attorneys:** First determine jurisdiction. If the parents were married at the time of the child's birth, juvenile court does not have jx. Next, determine what ill effects are really forced upon the child.
- **GAL:** Consider taking the testimony of the child's counselor and/or an expert to determine the full extent of harm to the child if the child does not have contact with his/her grandparents.

JUVENILE JUSTICE CASE LAW UPDATE:  
*Barrett v. Killings*, 2023 Tenn. App. LEXIS  
 161 (Tenn. Ct. App. Apr. 24, 2023)

**Facts:** Question of whether parental relocation statute applies where mother moved 44.45 away using a radial distance, but 52 miles away using driving distance. Trial court found relocation statute applied as greater than 50 miles distance.

**Court of Appeals reverses radial distance applies under rules and not driving distance**

- Parent's Attorneys: Utilize google maps to determine distance to new home; also plead material change of circumstances
- GAL: Make sure that material change of circumstances is plead so that best interest factors of child can be taken into consideration

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Aniyah W.*, 2023 Tenn. App. LEXIS 75  
 (March 1, 2023)

**Facts:** TPR appeal in which respondent's attorney did not file a brief and when ordered to do so, filed a brief that consisted of two paragraphs and a motion to withdraw. DCS argues brief is a waiver of appeal.

**Court of Appeals finds that brief is completely deficient and should justify waiver of appeal, but Carrington requires analysis.**

- Parent's Attorneys: An insufficient brief may get you past the Court of Appeals, but will it get you past the BPR?
- GAL: An insufficient brief does not mean that you will win automatically. You must still provide an analysis under Carrington

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Korey L., 2023 Tenn. App. LEXIS 63*  
 (Feb. 23, 2023)

**Facts:** TPR in which trial court reversed on multiple grounds due to insufficient findings per T.C.A. 36-1-113(k)

**Rule #1 of appellate practice: Determine whether the trial court's findings of fact and conclusion of law are sufficient for appellate review. If not, the case should be reversed.**

- Parent's Attorneys: When you receive the Order, you must determine whether the trial court provided an analysis
- GAL: Offer to draft the Order for the trial court and include as many facts and analysis as possible; when submitting it, submit it in word format so that trial court may make changes

JUVENILE JUSTICE CASE LAW UPDATE:  
*Nelson v. Justice, 2023 Tenn. App. LEXIS 310*  
 (Tenn. Ct. App. July 27, 2023)

**Facts:** Disbarred lawyer father filed petition for material change against mother having non-suited his previous case involving similar allegations. Mother files to deem father's petition an abusive lawsuit and asks father's counsel (his new wife) be disqualified. Trial court grants both.

**Court of Appeals reverses finding the non-suited petition cannot be used for the determination of an abusive lawsuit and other allegations are not substantially similar. Regarding the disqualification issue, there was no objective evidence to show the father's new wife knew anything about income**

- Parent's Attorneys: You must review the allegations of the previous petitions in order to assure substantial similarity; also, subpoena the attorney as a fact witness to have a better argument of disqualification
- GAL: Review the petition and review it early to determine if it is alleging the same issues. You cannot rely upon a non-suited petition because it was not litigated

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Riley B*, 2023 Tenn. App. LEXIS 206  
 (Tenn. Ct. App. May 16, 2023)

**Facts:** DCS alleges abandonment due to failure to provide suitable home under TCA 36-1-102(1)(A)(2). Mother testified that she obtained a 3 bedroom apartment the Monday before trial and DCS had not performed a home study. Mother consistently attended visits and provided financial support. Trial court terminates based upon grounds of abandonment.

**Court of Appeals reverses finding that Department had not done home study; therefore, they could not prove that mother's home was unsuitable.**

- **Parent's Attorneys:** The rule is generally "too little, too late." This case is an example of how to overcome this grounds at the last minute if your client has done other things well.
- **GAL:** Hit on the timeline of how long DCS has provided reasonable efforts and how long it took for parent to obtain housing. If necessary, ask for a continuance to determine if the housing really exists.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Lucca M.*, 2023 Tenn. App. LEXIS 124  
 (Tenn. Ct. App. March 30, 2023)

**Facts:** DCS alleges ground of abandonment due to failure to provide suitable home. DCS fails to present any evidence regarding reasonable efforts and no one asks mother about her current housing situation. Trial court terminates based upon this ground and other grounds.

**COA Reverses ground of abandonment due to failure to provide suitable home. DCS has the burden of proof and must show all elements. Because there were no questions regarding the elements, this ground must be reversed**

- **Parent's Attorneys:** Don't help DCS. If they are not asking the right questions, it is not your job to determine whether the elements are met. The burden is on DCS.
- **GAL:** Make a checklist of the necessary elements and whether the record contains proof regarding those elements. If the evidence is not in the record, it will more than likely be reversed.

### JUVENILE JUSTICE CASE LAW UPDATE:

*In re Abraham S.* 2023 Tenn. App. LEXIS 210  
(Tenn. Ct. App. May 17, 2023)

**Facts:** DCS alleged that father failed to provide suitable home despite the fact that father submitted applications for an apartment, and attempted to rent a home. During the 14 months of custody, DCS could only provide one incident where it provided the father assistance with housing. Trial court terminates on this ground as well as others.

**Court of Appeals reverses this ground. The Court finds that DCS failed to provide reasonable efforts considering it could only show one incident where it provided assistance. Father had also taken efforts to obtain housing.**

- Parent's Attorneys: Utilize TFACTS to determine if the Department has provided any assistance with housing. Do an OCR search and determine how many times "housing" appears.
- GAL: While the child is in custody, remind the case worker that they must make some effort to assist the parent with finding housing. If it is not in TFACTS, did it happen?

### JUVENILE JUSTICE CASE LAW UPDATE:

*In re Liberty T.*, 2023 Tenn. App. LEXIS 119  
(March 29, 2023)

**Facts:** TPR petition filed prior to new best interest factors taking effect. Petitioner files Amended Petition during litigation raising additional ground and trial court uses old best interest factors rather than new. Trial court dismisses petition finding best interest was not proven under old factors

**Rule: COA reverses finding that new best interest factors must be used when analyzing best interest as of April 22, 2021. If "Amended Petition" is separate and distinct, the new factors must apply if filed after that date.**

- Parent's Attorneys: Ask whether the new petition was a supplemental petition or amended petition. If it is an amended petition which is separate and distinct, you must use the new factors.
- GAL: The 20 new factors are extremely pro-child. If you can use them rather than the old factors, USE THEM by filing an Amended Petition and call it an Amended Petition

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Leah T.*, 2023 Tenn. App. LEXIS 256  
 (Tenn. Ct. App. June 22, 2023)

**Facts:** Petitioners filed a Motion to Amend in March, 2021 which was granted in May, 2021. Trial court used old best interest factors and finds termination is proper.

**COA reverses finding factors must be used based upon date trial court granted Motion to Amend rather than date petition was filed.**

- **Parent's Attorneys:** Timeline is everything when determining which grounds and factors to use. At this point (and based upon further cases) assume that the new factors should be used
- **GAL:** Make sure the record is clear which factors should be used and bring this case to the judge's attention when determining pre-trial issues of what factors to use

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Clara A.*, 2023 Tenn. App. LEXIS 37  
 (Feb. 1, 2023)

**Facts:** Trial court relies upon new best interest factors despite the fact that they were not in effect at the time of the petition.

**COA upholds finding that new best interest factors include old best interest factors; therefore, it was not reversible error and COA can simply review the factors that are applicable.**

- **Parent's Attorneys:** You need to prepare for all the best interest factors whether you believe if they are applicable or not.
- **GAL:** If there is a question of which best interest factors to use, rely upon the new best interest factors. The worst case scenario is that you overanalyzed the issue rather than committing a reversible error

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Emmalyn H.*, 2023 Tenn. App. LEXIS  
 203 (May 12, 2023)

**Facts:** Mother accused of abandoning child in the four months prior to filing the petition due to lack of visitation. Mother was incarcerated during that time; therefore, trial court and petitioners used incarcerated parent statute. Trial court terminates.

**Court of Appeals reverses. Because the petition did not include the ground of incarcerated parent, mother did not receive ample notice of allegation and therefore ground must be reversed.**

- Parent's Attorneys: Focus on grounds alleged in petition and do not allow other grounds to be tried by consent. If it is not alleged, you do not try it!
- GAL: Include as many allegations as possible regarding grounds in the petition. If the parent was incarcerated, include that ground. It is far better to strike a ground than have it reversed because you did not include it.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Zayda C.*, 2023 Tenn. App. LEXIS 276  
 (Tenn. Ct. App. July 10, 2023)

**Facts:** Father incarcerated at time of removal and received a sentence of 16 years. Father's rights terminated based upon multiple grounds including persistence of conditions.

**Court of Appeals reverses persistence finding. Father did not have custody of the child at the time of the child's removal due to his incarceration; therefore, there is not an Order removing the child from father's custody**

- Parent's Attorneys: Every element of the ground must be met. In order to prove persistence, there must be a court order removing the child from the parent's custody. If this does not exist, this ground fails.
- GAL: Look at who had custody of the child at the time of removal. If the other parent was incarcerated at the time, this ground will probably not apply.

JUVENILE JUSTICE CASE LAW UPDATE:  
*White v. Miller*, 2023 Tenn. App. LEXIS 313  
 (Tenn. Ct. App. July 31, 2023)

**Facts:** Trial court determines retroactive support based upon child support guidelines; however, it begins calculation after father began to make payments lower than guideline calculation

**Court of Appeals reverses finding because there was not a justification for a deviation from the child support guidelines, the father still owed \$200 more for each month that he was making lower support payments prior to the Order**

- Parent's Attorneys: Review the other parties lifestyle to determine imputed value and also make sure that you determine all of the proper timeline when payments were made. Some may be deficient.
- GAL: Review the child support guidelines to determine if the factors should be taken into consideration for a deviation. If the record does not contain the reasoning, it may be reversed due to an abuse of discretion

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Disnie*, 2023 Tenn. App. LEXIS 88  
 (Tenn. Ct. App. March 8, 2023)

**Facts:** Grounds of abandonment alleged, but the word "support" does not appear in petition. Furthermore, child was born out of wedlock and it was unclear whether father had custody at time of removal. Trial court terminates based upon abandonment due to failure to support and persistence of conditions

**Court of Appeals reverses. COA finds that because the word "support" does not appear in the petitioner, parents were not put on notice regarding abandonment ground. Furthermore, it was unclear whether father had custody at time of removal. If he did not, persistence ground could not apply. New best interest factors should be used (this case has already been cited 6 times for new best interest factors)**

- Parent's Attorneys: Carefully review wording in petition to determine if parents are put on notice of allegations. DO NOT CONSENT TO ALLEGATIONS through your questioning!
- GAL: Make sure the magic words are in the petition. Try to use verbatim language from statutes that you are relying upon



JUVENILE JUSTICE CASE LAW UPDATE:  
*Hasley v. Lott*, 2023 Tenn. App. LEXIS 293  
 (July 20, 2023)

**Facts:** Trial court refused to hear proof regarding matters which mother thought were relevant for a custodial determination, but mother did not make an offer of proof. Court does not consider evidence and court determines both parents should be named joint primary residential parent.

**Court of Appeals upholds evidentiary issue because mother failed to make offer of proof and record does not show evidence. Court reverses joint primary residential parent because parents were not in agreement**

- **Parent's Attorneys:** If you intend to bring an evidentiary issue to the Court of Appeals, you must make an offer of proof or you are waiving the issue. If the parties are not in agreement, you cannot have a joint primary residential parent per the statute
- **GAL:** If the parent objects and does not make an offer of proof, do not remind them to make an offer of proof. The burden is on them and they waive the issue if they fail to make the offer of proof.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re McKayla H.*, 2023 Tenn. App. LEXIS 140 (Tenn. Ct. App. April 6, 2023)

**Facts:** Father appealed relocation case involving child relocating to Virginia with mother. Mother and GAL asked for their attorney fees for the appeal.

**Court of Appeals upholds relocation due to mother always being parent AND grants mother and GAL attorney fees for appeal due to the fact that father had previously hired two private investigators to follow mother thus showing father had superior resources to pay**

- **Parent's Attorneys:** If the GAL does not bring up fees, don't bring up fees.
- **GAL:** Remember to ask for GAL fees in your brief. If the parents have private attorneys, you should not be stuck at the appointed rate for writing your brief.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Paisley J.*, 2023 Tenn. App. LEXIS 276  
 (Tenn. Ct. App. July 10, 2023)

**Facts:** TPR filed alleging abandonment by incarcerated parent; however, trial court found general abandonment. Question of whether abandonment was tried by implied consent.

**Court of Appeals reverses findings that implied consent did not exist. In order for implied consent to exist, the evidence cannot be relevant for any other grounds alleged...ESPECIALLY IN TPRs**

- Parent's Attorneys: Pay special attention to the grounds alleged in the petition. If the petitioner begins going outside the relevance of those grounds, object and state outside the scope of the petition. Do not consent to other grounds if they are not pled
- GAL: Pay attention to the elements of each ground and make sure that the grounds are alleged. If they are not alleged, you cannot use them for termination due to lack of notice

JUVENILE JUSTICE CASE LAW UPDATE:  
*Colley v. Colley*, 2022 Tenn. App. LEXIS 441  
 (Tenn. Ct. App. Nov. 17, 2022)

**Facts:** Father filed post-divorce action regarding alimony and division of assets. Father non-suits his case and court awards attorney fees to mother pursuant to MDA and TCA 36-5-103(c). Father appeals claiming the non-suit prevents mother from obtaining attorney fees

**COA reversed trial court finding that filing of non-suit prevents either party from being prevailing party under statute. Supreme Court has granted certiorari**

- Parent's Attorneys: If the COA is correct, you cannot obtain attorney fees if one of the parties non-suits the case unless it is an abuse of litigation case. If the Supreme Court reverses, a non-suit could have major repercussions.
- GAL: What if a GAL non-suits a case.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Isaiah W., 2023 Tenn. App. LEXIS 178*  
(Tenn. Ct. App. May 3, 2023)

Facts: Mother appealed to COA alleging deficiencies in d/n matter stemming from juvenile court.

**COA upholds finding that an appeal to Circuit Court is treated as if juvenile court never happened. Green v. Green cited AGAIN!**

- Parent's Attorneys: Green v. Green has been cited 16 times and never reversed. It is still good law despite what DCS says
- GAL: There is a case out there wherein Green needs to be analyzed. It's just a matter of finding the right one

## WHAT'S NEXT???

**Burden Shifting**

**Technicalities**

**Due Process**