



CASE LAW UPDATES

By David R. Grimmett, Esq.

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TOPICS FOR TODAY:

- Artificial Intelligence is Wrong
- Indian Child Welfare Act
- Non-Suits & Atty Fees
- Appeals to the Juvenile Judge
- Timely Disclosures & Offers of Proof
- Can Chancery find D/N
- No Best Interest in D/N..what?
- Motions to Continue TPRs
- Failure to Manifest Must have Both Analysis
- Attorney's fees Revisited
- Avoiding Contempt with OPs
- Signatures on Parenting Plans
- Grandparent Visitation
- TRCP & Legal Analysis
- Recusal Motions
- Willfulness & Domestic Violence
- ADA vs. TPR vs. Constitution
- Timeline of Evidence
- Attorney Fees in Admin Cases

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TOPICS FOR TODAY:

- Skrmetti is Coming for You!
- Grandparent Statute in TPRs
- Attorney Recusal vs. Judge Recusal
- Appeals from Magistrates
- Expert Proof & Home Studies
- Parent's Reaction = Material Change
- Specificity in TPR Petitions
- Attorney Fees & Ghost Writing
- Aspirational Maximum Visitation
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- CASA Records are Admissible?
- Ineffective Assistance of Counsel Revisited
- Adoption Trumps All
- Three Way Split in Child Custody
- Blueprint for Defeating Good Arguments in TPR

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Artificial Intelligence in Court Analysis

Overview

Key Legal Holdings

- Tennessee Supreme Court Rule 9, which establishes the system for enforcing the Rules of Professional Conduct, does not violate the attorney's due process rights by combining investigative, prosecutorial, and adjudicative functions within the Board of Professional Responsibility.
- The attorney violated Rule 1.6(a) of the Tennessee Rules of Professional Conduct by revealing confidential information relating to the representation of a client during a meeting in a separate case without the client's informed consent.
- The attorney did not violate Rule 4.4(a)(1) of the Tennessee Rules of Professional Conduct because his disclosures during the meeting had a substantial purpose and were not intended to embarrass or burden anyone.

Material Facts

- The attorney, [Jeffrey S. Bivins](#) ▼, was representing a client in a juvenile case involving allegations of sexual assault ("Case A").
- [Bivins](#) ▼ was later retained as counsel in a **dependency** and **neglect** case ("Case B").
- During a meeting in Case B, [Bivins](#) ▼ disclosed confidential information about his client and other individuals involved in Case A to third parties who were not under a duty to maintain confidentiality.

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Material Facts

- The attorney, [Jeffrey S. Bivins](#) ▼, was representing a client in a juvenile case involving allegations of sexual assault ("Case A").
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In re Epik W., 2024 Tenn. App. LEXIS 467 (Tenn. Ct. App. Oct. 29, 2024)

SUMMARY:

Mother dies and DCS files d/n petition. Children deemed "Indian Children" and tribe from Alaska intervenes. DCS argues state law of "Existing Indian Family Doctrine" supersedes "Indian Child Welfare Act" (ICWA) and denies transfer to tribal court. Matter is appealed to Circuit who affirms. COA reverses finding Circuit Court did not have jx due to lack of final order. In the interim, DCS disclaims state law and agrees ICWA should apply. Matter remanded and trial court strongly encouraged to address transfer issue.

POSITIONS:

Parent's Attorney

- If you have a possibility to apply ICWA, you should! The burden of proof is higher on the petitioner and there is less likelihood of termination.

Guardian ad Litem

- ICWA cases are extremely complicated as is shown in this case. The tribe was allowed to intervene and they brought numerous arguments for why ICWA should apply. If you have an ICWA case, you should reach out to attorneys in other states who have experience and pick their brains.

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Cipolla v. Coutras, 2024 Tenn. App. LEXIS 338 (Tenn. Ct. App. Aug. 6, 2024)

SUMMARY:

Father files petition to modify and he is ultimately named primary custodian by magistrate. Mother sought rehearing before Juvenile Court Judge and in the interim, multiple motions are filed between the two. Ultimately, mother filed a voluntary dismissal of the appeal. Juvenile Court Judge enters order granting father's attorney's fees as prevailing party. Mother appeals and COA affirms finding that a non-suit of an appeal does not deprive petitioner of attorney fees.

POSITIONS:

Parent's Attorney

- If you are the petitioner and the other side appeals and then non-suits, that does not have an effect on the ultimate findings in your case. You can still seek attorney's fees.

Guardian ad Litem

- This same logic may apply if you are the GAL and the petitioner. Remember that you can also seek your own personal fees rather than the appointment fees if the parties are able to pay.

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In re Henry W.H., 2024 Tenn. App. LEXIS 495 (Tenn. Ct. App. Nov. 19, 2024)

SUMMARY:

Mother filed Notice of Appeal to Juvenile Court Judge per old statute in 2021. 543 days later, in April, 2023, T.C.A. 37-1-207(d) was amended to allow discretionary appeals to the Juvenile Court Judge. Trial court found it could apply new statute retroactively and denied de novo appeal. Matter was appealed and COA found that mother's right to a de novo appeal under the old statute was a "vested right;" therefore, the matter was reversed to allow a de novo hearing.

POSITIONS:

Parent's Attorney

- If your appeal was filed prior to April, 2023, you are entitled to a de novo hearing before the Juvenile Court Judge. This is also a good case to analyze which law should apply after a statute is changed affecting juvenile court proceedings. Refer to analysis under Doe v. Sundquist, 2 S.W.3d 919 (Tenn. 1999).

Guardian ad Litem

- Look at the timeline of the appeal and which law should apply. Also, try to keep your old red books because they might come in handy.

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Anderson vs. Marshall, 2024 Tenn. App. LEXIS 548 (Tenn. Ct. App. Dec. 19, 2024)

SUMMARY:

Father files Petition to Modify and Request for Permission to Relocate. Mother opposes and tries to admit child's psychiatric records which she sent to father the day before trial at 5:00 PM. Father objects to the admissibility and trial court finds records inadmissible due to lack of sufficient notice. Mother did not make an offer of proof and appealed issue. COA finds that without an offer of proof, the evidentiary issue is waived.

POSITIONS:

Parent's Attorney

- If you really feel strongly about admitting evidence, you must place it into the record after it is deemed inadmissible or the appellate court will deem your claims waived. The only way to do this is with an offer of proof.

Guardian ad Litem

- This is also a good case regarding evidentiary issues and granting access to records. In this case, the party offering the proof provided less than 24 hours notice. If you want to exclude something, you might be able to use this to exclude it.

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Page vs. Cikalo, 2024 Tenn. App. LEXIS 350 (Tenn. Ct. App. Aug. 13, 2024)

SUMMARY:

Grandmother gains custody through ongoing d/n matter and files petition for adoption in Chancery Court. While petition is pending, DCS receives new referral that uncle sexually abused one of the children and uncle lives on grandmother's property. Facts show grandmother knew or should have known about abuse. Juvenile Court Judge then placed as chancery court judge by interchange and found abuse occurred, granted d/n and denied adoption. Appeal ensued and COA found 36-1-116(k)(7) allowed jurisdiction over the d/n to Chancery.

POSITIONS:

Parent's Attorney

- Beware of the power of Chancery Court if a petition for adoption is filed and DCS intervenes. The possibility of a d/n & severe abuse finding is still possible even against the petitioner for adoption.

Guardian ad Litem

- Per this case, it appears that you may request a d/n finding against a petitioner if you feel that it is necessary.

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In re Josephine, 2024 Tenn. App. LEXIS 389 (Tenn. Ct. App.

SUMMARY:

Trial court found children were dependent, neglected and severely abused and placed children with aunt. Trial court does not include best interest analysis and parents appeal. COA points out that d/n statutes do not require a best interest analysis but instead "a placement that is best suited to...the welfare of the child." Trial court therefore could look at bond between child and custodian as well as other factors.

POSITIONS:

Parent's Attorney

- This does not mean that best interest analysis is not relevant. Instead, it means that other factors outside of best interest addressing the welfare of the child should be considered. Some may benefit and some may hurt.

Guardian ad Litem

- It is interesting to note that the court focused on the bond between the custodian and the children and whether it would be harmful to remove that bond. You may wish to include this in your investigation.

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In re Rome W., 2024 Tenn. App. LEXIS 518 (Tenn. Ct. App. Dec. 3, 2024)

SUMMARY:

Mother had ongoing cancer treatment and according to her attorney had chemotherapy two days before trial and one day after. Mother also had several outstanding warrants. Court preemptively denied motion for continuance and went forward. COA found that mother was NOT denied due process because she was represented by an attorney and she failed to show due diligence in asking for a continuance.

POSITIONS:

Parent's Attorney

- If you have a good cause for asking a continuance, you need to ask for it in a motion. Otherwise, even cancer treatment might not be enough if it is not diligent.

Guardian ad Litem

- This case was reset multiple times and mother clearly was not going to show considering she had outstanding warrants. The primary goal is to provide permanency as quickly as possible to the child. This is a good example of expeditiously granting that permanency when the parent does not show good cause for a continuance.

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In re Tayla R., 2024 Tenn. App. LEXIS 517 (Tenn. Ct. App. Dec. 3, 2024).

SUMMARY:

Termination hearing commences in which mother fails to show. Her attorney at the time forgot his cell phone and could not contact mother. He asked for a continuance which is denied. Mother appeals claiming lack of notice.

COA upholds denial of continuance finding that mother was not diligent in asking for a continuance and the matter had been ongoing for 1.5 years since the petition filed by DCS.

POSITIONS:

Parent's Attorney

- A Motion to Continue should be filed prior to the hearing and should include a good reason.
- This is a good case to review the analysis necessary
 - The length of time the proceeding has been pending
 - The reason for the continuance
 - Diligence of the party seeking continuance
 - Prejudice to the requesting party if not granted

Guardian ad Litem

- If there is not a good reason, finality for the child is a very good reason to deny the motion

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In re Connor A., 2025 Tenn. App. LEXIS 49 (Tenn. Ct. App. Feb. 7, 2025)

SUMMARY:

Trial court found multiple grounds for termination including Failure to Manifest an Ability and Willingness to Parent. COA reversed this finding due to lack of analysis regarding the effects a return to the parents would have on the children. Therefore, the matter was reversed on this ground, but it was upheld on the remaining grounds.

POSITIONS:

Parent's Attorney

- Remember that the appellate court must analyze all grounds. For the Failure to Manifest ground, the trial court must show two separate analysis regarding (1) whether the parent has failed to evince an ability or willingness to parent and (2) whether returning the child to the parent would pose a risk of substantial harm." If both are not proven, this ground fails.

Guardian ad Litem

- If you want to prove this ground, remember that both the evidence and the final order must include both elements. Otherwise, it will be reversed.

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Lehmann v. Wilson, 2024 Tenn. App. LEXIS 526 (Tenn. Ct. App. Dec. 6, 2024)

SUMMARY:

Mother filed petition to establish and request for parenting plan. Based upon evidence at trial, magistrate entered order limiting father's parenting time and granting mother's attorney's fees "because Mother has been successful." Father appealed to Juvenile Court Judge who agreed with magistrate. COA reversed finding magistrate did not include best interest analysis for parenting time and further did not include proper analysis for attorney's fees whether they were reasonable.

POSITIONS:

Parent's Attorney

- Always look to the final order whether there is a proper analysis. Remember that the number one reason for reversals is due to failure to provide a proper analysis.
- Simply because you win does not mean you get your attorney's fees

Guardian ad Litem

- Remember that best interest of the child is always the consummate goal in juvenile court proceedings. If there is not a best interest analysis, the case may be reversed and remanded. If the analysis is missing, file a Rule 59 Motion to Alter or Amend and ask for an analysis.

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Gillies vs. Gillies, 2025 Tenn. App. LEXIS 50 (Tenn. Ct. App. Feb. 11, 2025)

SUMMARY:

Father was in the military and lived in Illinois. Grandmother lived in Tennessee. An Order was entered granting grandmother visitation with child during holidays. Father filed for an Order of Protection in Illinois claiming child was abused in Grandmother's house and granted OP. DCS investigated and found no substantiation. Grandmother filed Petition for Contempt and father sentenced to 280 days. COA found that because there were two competing orders and no finding that father sought OP maliciously, contempt could not be found.

POSITIONS:

Parent's Attorney

- Watch out for this case. At first blush, it appears that the father won the contempt allegations, but it also shows that the trial court may be able to find that the filing of a false OP may show that father could still be held in contempt

Guardian ad Litem

- The GAL in this case advocated that the child should remain with the grandmother. Unfortunately, there was no finding that father maliciously filed the OP to avoid grandmother's visitation. If that finding was included, this case could have ended differently.

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Duffy vs. Duffy, 2024 Tenn. App. LEXIS 503 (Tenn. Ct. App. Nov. 25, 2024)

SUMMARY:

Divorce action filed and trial court “adopted” wife’s proposed parenting plan without signing or attaching the plans. Husband files a Motion to Alter or Amend and approximately one year later, the court signs the parenting plan. Husband appeals approximately 2 years later claiming the time to appeal began when court signed parenting plan. COA finds the appeal is untimely and awards wife her appellate attorney fees. COA specifically states there is no need for the trial court to sign the parenting plan.

POSITIONS:

Parent’s Attorney

- Always watch out for the time of appeal. Remember that the 30 days can be tolled by filing a Rule 59 Motion to Alter or Amend, but the real question is when does the 30 day appeal time begin. Always try to err on the side of caution

Guardian ad Litem

- Look at the record and determine if all pleadings have been signed and whether the parties are following the Orders. Although this case says the trial court does not need to sign the parenting plan, there is no reason to not ask for a signature

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Fly vs. Fly, 2024 Tenn. App. LEXIS 558 (Tenn. Ct. App. Dec. 26, 2024)

SUMMARY:

Grandmother petitioned for visitation with grandchild. Juvenile Court finds the loss or severe reduction of visitation with the grandparent would cause severe emotional harm to the child. Mother appeals. COA finds that severe harm was not found because trial court stated in Order that it could not decipher what harm would befall the child in the future if visitation was not granted.

POSITIONS:

Parent’s Attorney

- Grandparent visitation is an extremely heavy burden on the petitioner. The Court must not only find that the parent is refusing visitation, but must also find that the refusal will lead to severe emotional harm to the child.

Guardian ad Litem

- If there is severe harm to the child, you must show it through the record because the case will more than likely be appealed. In this case, the grandmother repeatedly stated that she thought the mother was unfit. This is a forewarning to prepare the petitioner for their own testimony.

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Evans vs. Derrick, 2024 Tenn. App. LEXIS 409 (Tenn. Ct. App. Sept. 20, 2024)

SUMMARY:

Grandmother was heavily involved with child from the child's birth wherein grandmother was primary custodian for the child until the mother's death, the child traveled to/from school with grandmother, and had other visitation. Father opposed. Grandmother ultimately granted every other weekend visitation, 2 weeks in the summer, mother's day and other holiday visits.

COA finds that visitation is necessary, but further finds visitation granted was excessive.

POSITIONS:

Parent's Attorney

- In this case, father cut off visitation which showed severe reduction. If you have a grandparent visitation issue, look to what visitation was granted and what was denied. Remember that the standard is whether the parent "severely reduced visitation".
- Remember that parents always have superior parental rights. Grandparents cannot be placed on the same level as was the case here.

Guardian ad Litem

- Be careful in how much visitation you request if you are supporting grandparent visitation. If you go too far, the COA may find that the visitation is excessive.

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Moore vs. Heilbrunn, 2024 Tenn. App. LEXIS 445 (Tenn. Ct. App. Oct. 11, 2024)

SUMMARY:

Mother filed an Order of Protection against father alleging drug abuse. The Court orders screens and mother tested positive for PCP, oxycodone and K2. The parents subsequently entered an "Agreed Order" to place primary custody with father. Mother claims that she immediately underwent drugs screens which were negative. Mother files a motion to reconsider without referencing any rules. Trial court enters final order on Motion and incorporates parenting plan, but does not go through best interest analysis. COA reverses.

POSITIONS:

Parent's Attorney

- When filing a motion, you must distinguish which rules of civil procedure apply and incorporate those in your pleadings and the final order
- When entering any parenting plan, the trial court must include a best interest analysis. If it does not, the case will be remanded.

Guardian ad Litem

- Remember that the most common reason for a reversal is a lack of legal analysis in the trial court's order. If you see it missing, consider filing a Rule 59 Motion to Alter or Amend

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In re Jolene S., 2024 Tenn. App. LEXIS 516 (Tenn. Ct. App. Dec. 3, 2024)

SUMMARY:

In a TPR hearing, the respondent mother orally moved to have the trial judge recused. The trial judge responded by stating that such a motion should be in writing and entered an Order denying the motion. Two days later, mother filed a written Motion to Recuse. The trial court never addressed the motion and instead entered an Order granting the TPR. Mother appeals recusal issue and COA dismisses appeal due to the fact that no final order was entered.

POSITIONS:

Parent's Attorney

- The COA stated that practitioners must be meticulous in drafting Rule 10B motions. This is due to the accelerated nature of these motions
- If you are going to file a Rule 10B motion, you should have some really good grounds and include an affidavit

Guardian ad Litem

- Make sure that the movant's motion complies with the requirements of Rule 10B
- Watch out for the effects on any orders entered after the Motion to Recuse is filed. The COA does not address that issue in this case.

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In re Mia C., 2024 Tenn. App. LEXIS 385 (Tenn. Ct. App. Aug. 30, 2024)

SUMMARY:

At trial, petitioner alleged willful abandonment due to failure to pay child support. Father claimed affirmative defense that he did not know how to pay child support and he did not know the location of mother. Trial court finds grounds, but denies best interest. Evidence was voluminous regarding father's domestic violence. Father denied all allegation and claimed he was the victim.

COA agrees with trial court regarding grounds, but reverses best interest finding and grants TPR.

POSITIONS:

Parent's Attorney

- This is a really good case regarding defenses and offering proof to defeat best interest. Although the COA disagreed, this case goes through what evidence the trial court relied upon in denying best interest. This opinion included a good dissent.
- Showing a respondent's relationship with other children might defeat a TPR.
- If your client has money set aside in an abandonment case, s/he should probably not volunteer its existence.

Guardian ad Litem

- In this case, the COA relied heavily on the father's refusal to accept responsibility for his past actions; therefore, termination was in the best interest of the child.
- Also focus on how much visitation respondent has exercised

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In re Dorothy A., 2024 Tenn. App. LEXIS 555 (Tenn. Ct. App. Dec. 23, 2024)

SUMMARY:

DCS files termination petition alleging mental incompetence because they could not care for a child with special needs. Respondents filed Motion to Dismiss claiming petition violates constitution and Americans with Disabilities Act.

POSITIONS:

Parent's Attorney

- Although father raised constitutional questions in the case, father did not specifically raise constitutionality of the statute; therefore, that issue was waived
- Trial court relied upon expert witness parenting evaluation showing parents could not competently care for child with special needs due to parents' own intellectual disabilities

Guardian ad Litem

- Make sure that the parents undergo a parenting evaluation to determine if they have the capacity to care for children with any kind of special needs (mental or physical)

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In re Remington G, 2025 Tenn. App. LEXIS 9 (Tenn. Ct. App. Jan. 13, 2025)

SUMMARY:

Father filed a petition to establish parentage; however, trial court limited evidence to events that occurred after a previous hearing regarding pendente lite parenting time.

Mother tried to introduce facts prior to the last hearing and judge denied admission. Mother did not make an offer of proof; however, the questions and testimony show what would have been offered.

COA reverses trial court finding that the excluded evidence was relevant for making a best interest determination; therefore, the case was reversed and remanded

POSITIONS:

Parent's Attorney

- If evidence is relevant for the best interest of the child, it should come in even if it is prior to the last hearing
- Make sure that you create a timeline of when events occurred and what events you are basing the questions.

Guardian ad Litem

- Best interest is always the focal point. If there is an objection regarding relevance, it appears that if the evidence is relevant for best interest, it should be entered.

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Burke vs. Dept. of Child's Servs., 2024 Tenn. App. LEXIS 553 (Tenn. Ct. App. Dec. 20, 2024)

SUMMARY:

Child was placed in numerous pre-adoptive homes, but continued to exhibit sexualized behavior. Ultimately, she was placed in a Tennessee home and DCS received referral for sexual abuse against foster-father. DCS substantiates and allegations are dismissed at administrative hearing. Respondent asks for attorney fees which is denied.

COA upholds denial of attorney fees despite finding that DCS investigation was "less than stellar."

POSITIONS:

Parent's Attorney

- Attorney's fees may be awarded in DCS substantiation cases if:
 - The claims contained in the notice do not have evidentiary support; or
 - The state agency issued the notice to harass, cause unnecessary delay, or cause needless expense to the party issued the notice
 - This is a very tough threshold, but not impossible. You must look at the evidence.

Guardian ad Litem

- GALs are not appointed in substantiation cases, but you should be aware whether the respondent was substantiated considering that is a lesser burden

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U.S. vs. Skrmetti, 605 US ____ (2025)

SUMMARY:

Tennessee passes SB1 which prohibits medical providers from administering puberty blockers, hormone therapy, and sex-transition surgeries to minors for the purpose of altering their appearance or validating their gender identity when inconsistent with their biological sex. Law included exceptions for certain medical and included enforcement against doctors

District Courts enjoin law finding law infringes upon parents' fundamental right to direct their children's medical needs and equal protection for transgender children.

Supreme Court reverses skipping parental rights argument and finding issue only merits rational basis test.

POSITIONS:

Parent's Attorney

- Supreme Court mentions the adverse effects of these types of procedures. What do you do when a parent in New York allows the procedure and a parent in Tennessee objects?

Guardian ad Litem

- You must advocate for the child's best interest which may mean going against your own beliefs

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Judd vs. Powell, 2025 Tenn. App. LEXIS 93 (March 14, 2025)

SUMMARY:

DCS files petition for d/n and removes children placing them with foster family. Ultimately, foster family adopts children. After adoption, biological grandparents file petition for visitation per grandparent statute. Trial court denies petition for lack of standing and awards attorney fees.

COA upholds finding that if children are adopted by non-relative and/or non-stepparent, grandparents are not entitled to any visitation. COA also awards attorney fees despite the fact that petitioners were pro se finding their motions were frivolous

POSITIONS:

Parent's Attorney

- In TPRs, beware that grandparents can lose visitation if children are adopted by nonrelatives or non stepparents.

Guardian ad Litem

- You might want to make parents and their attorneys aware that grandparents will lose visitation if children are adopted by nonrelatives or non stepparents. This may be leverage for a PACA considering the relationship with grandparents.
- Even pro se parties may have to pay attorney fees per 20-12-119 if the court finds the pro se party acted unreasonably in filing or refusing to withdraw their pleadings

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Acevedo vs. Sierra, 2025 Tenn. App. LEXIS 104 (Tenn. Ct. App. March 26, 2025)

SUMMARY:

Circuit Court judge had standing order to recuse the court from hearing any cases involving specific attorney. After hearing several months of litigation, one of the parties retains the excluded attorney and files a Motion to Recuse. Rather than recusing herself, the judge recuses the attorney.

COA reverses finding conflicting orders; therefore, remanded to determine if recusal should remain

POSITIONS:

Parent's Attorney

- The mother was losing several hearings regarding custody and decided to retain an attorney who might force a change of judge and possibly better treatment. Based upon this case, it is the judge who must recuse themselves and not the attorney.

Guardian ad Litem

- This is a memorandum opinion; however, it is something to review if this happens. The Court did not reverse the trial court, but instead vacated the order and allowed the trial court to possibly change its standing order regarding recusal. Given the circumstances, this is a better approach if you realize the OC is trying to use this as a strategy to change judges.

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Barton vs. Keller, 2025 Tenn. App. LEXIS 116 (Tenn. Ct. App. Apr. 8, 2025)

SUMMARY:

Mother and father engage in litigation regarding custody and child support. Magistrate enters order and father appeals. Juvenile Court Judge enters order simply upholding magistrate order with no written findings or conclusions of law. Father appeals.

COA reverses finding magistrates order was not final because it did not address child support. Furthermore, juvenile court judge is required to enter specific findings of fact and conclusions of law in its own order and not simply adopt order of magistrate. COA says juvenile court judge's duty is similar to COA on appeal.

POSITIONS:

Parent's Attorney

- 37-1-107(d)(1)(E) requires the juvenile court judge to enter a separate order reviewing the entire magistrate order. If the Order does not contain specific findings of fact and conclusions of law, it is reversible.
- If the magistrate order does not address all issues, it is not final and the appellate clock is not triggered.

Guardian ad Litem

- This is a good case to keep in mind for all appeals. This was a case of first impression and now all juvenile court judges are considered appellate judges similar to COA. Make sure that the judge is aware of this case.

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In re Dawson S., 2025 Tenn. App. LEXIS 117 (Tenn. Ct. App. April 19, 2025)

SUMMARY:

Child presents to Vanderbilt with multiple injuries including TBI, multiple fractures and subdural, retinal and subarachnoid hemorrhages. Child and siblings removed. TPR filed by maternal grandparents of one of children goes forward alleging severe abuse. Petitioners use nurse practitioner for medical proof over objection. Trial court also waives home study.

COA upholds use of nurse practitioner for causation of severe abuse. Reverses waiver of home study because petitioners are not biologically related to other children.

POSITIONS:

Parent's Attorney

- COA went to great lengths to state that because medical proof was unrebutted, it must be accepted. If an alternative medical theory was presented, the COA might not have been as agreeable.

Guardian ad Litem

- Many times the respondent will produce witnesses who state that the respondent could never commit abuse. This is a good case to look at wherein the trial court and COA found witnesses' disbelief that father could do such a thing does not count the unrebutted medical proof.
- Remember that you must have a home study if the petitioners are not related to any of the children.

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Leath v. Flowers, 2025 Tenn. App. LEXIS 137 (Tenn. Ct. App. Apr. 22, 2025)

SUMMARY:

Mother and father have parenting plan providing equal parenting time. Mother remarried and DV ensued between mother and new husband. Mother still remained with new husband. None of incidents occurred while child was in mother's custody.

COA upholds material change finding a parent's reaction or lack thereof to a significant other's actions justifies a material change requiring change of custody and supervision.

POSITIONS:

Parent's Attorney

- This is an interesting case because it distinguishes between what was known at the time of the parenting plan and what was not known afterward. If all facts were already known at the time of the parenting plan, it is not a material change.

Guardian ad Litem

- Make sure that you distinguish what knowledge was available at the time of the creation of the original parenting plan. If the new facts were not available, it justifies a material change.

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In re Gabriel F., 2025 Tenn. App. LEXIS 161 (Tenn. Ct. App. May 7, 2025)

SUMMARY:

DCS filed TPR alleging among other things abandonment by failure to visit and failure to provide support from an incarcerated father. Father appealed.

COA reverses those grounds finding that DCS did not include specific statutory language or averments to the specific statutes and father did not have notice of those allegations

POSITIONS:

Parent's Attorney

- You must look at the specific allegations contained in the petition. If the allegations are not specific and do not name the actual statutes for the grounds, you may have an argument that those grounds are waived due to lack of notice. However, remember that if your questions are related to those specific issues, the COA may find that you implicitly consented to those grounds being tried.

Guardian ad Litem

- If the grounds are not specifically spelled out, you may wish to file your own petition making specific reference to the grounds. If so, make sure that you include the specific statutes and the language from those statutes. The COA has reversed multiple cases for technical issues such as this one.

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Cox vs. Cox, 2025 Tenn. App. LEXIS 190 (Tenn. Ct. App. May 28, 2025)

SUMMARY:

Father loses employment and 2 older children reach majority; therefore, father files petition for reduction of support. Both parents pro se. Father found to be willfully underemployed and mother awarded attorney fees.

Father claims attorneys fees from an attorney that was drafting his pleadings outside the state.

COA reverses award of attorney's fees to mother and upholds remaining. Also finds that father is not entitled to attorneys fees on appeal because attorney did not comply with Rule 11.

POSITIONS:

Parent's Attorney

- Be careful what you ask for. In this case, the father actually paid more than he would have if he had not filed the petition.
- Father used counsel from another state to draft his pleadings and father's attorney's fees denied. The COA does not mention ghost writing, but this may be an ethics violation

Guardian ad Litem

- Remember that attorney's fees are only allowed if actual attorneys are involved. This only includes attorneys who file pleadings. This is also a good example of how to show underemployment through tax records, job changes and credit card payments.

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In re Adalynn B., 2025 Tenn. App. LEXIS 210 (Tenn. Ct. App. June 11, 2025)

SUMMARY:

Father filed petition to establish custody and parentage. Father was also deployed to Kuwait during litigation for 10 months. Court looked at best interest factors and found mother should be granted primary custody and father appealed.

COA found language in statute requiring maximum visitation is aspirational rather than mandatory. Best interest is always the "polestar, the alpha and omega."

POSITIONS:

Parent's Attorney

- Try to bring in a third party to testify on your client's behalf, but make sure you know what s/he will say
- In this case, the court did not believe either parent; however, the paternal grandmother testified that there was no real relationship with the father and child. This hurt the father's case

Guardian ad Litem

- Do not rely solely upon the idea of maximizing the parenting time. Best interest trumps all

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In re Markus E (II), 2025 Tenn. App. LEXIS 244 (Tenn. Ct. App. July 10, 2025)

SUMMARY:

Supreme Court previously dismissed TPR finding severe abuse was not supported. Parents filed motion to dismiss underlying D/N claiming TPR was res judicata. Trial Court denied motions.

COA upholds finding that TPR is not res judicata on D/N; however, further finds that TPR was res judicata on severe abuse issue

Matter appealed last week

POSITIONS:

Parent's Attorney

- It might be in your best interest to go forward with the TPR prior to the D/N. If the court cannot find severe abuse in the TPR, you can use that as res judicata in the D/N.

Guardian ad Litem

- This is a difficult outcome. If the TPR is denied and the sole ground is severe abuse, the child may be stuck in custody because the child will be found to be abused but not severely abused. Use this case as a warning that severe abuse should not be the sole ground for a TPR if you can avoid it.

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In re Azaylaya, 2025 Tenn. App. LEXIS 248 (Tenn. Ct. App. July 11, 2025)

SUMMARY:

TPR filed against mother and father alleging persistence of conditions and failure to manifest ability to parent. Oldest child testified that he would kill himself if he was forced to visit with mother. CASA reports admitted over objection.

COA upholds grounds finding mother committed inappropriate acts during visitation and father had not tried to reinstitute his visitation despite the fact that he had undergone hair follicle.

COA further upholds admission of CASA reports

POSITIONS:

Parent's Attorney

- CASA records were admitted as they were submitted to DCS and the COA found that they were maintained "in accordance with DCS' internal procedures and properly admitted under 803(6) business records exception. Beware that this case could be used to admit inadmissible hearsay if submitted through DCS.

Guardian ad Litem

- Counselor was deemed expert witness regarding mental state of children. This is a good example of qualifying someone who is not a doctor.
- Look at the behaviors of the parents during the visitation. Mother's visitation was stopped due to dropping her pants and showing the children a tattoo and taking video calls during the visitation.

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In re Krystopher C., 2025 Tenn. App. LEXIS 258 (Tenn. Ct. App. July 18, 2025)

SUMMARY:

Mother and father severely malnourish new born child for over 135 days providing only water and 2% milk. Child removed. Over course of litigation, parents have 15+ attorneys appointed to them. At one point, appointed counsel withdraw and trial court says the parents can pay for an attorney. TPR moves forward and parents appeal pro se.

COA reverses grounds of abandonment; however, COA revisits Carrington finding that they may review whether parents received "a fundamentally fair parental termination proceeding." COA finds that parents waived their right to an attorney and therefore the ineffective assistance of counsel argument fails.

POSITIONS:

Parent's Attorney

- Watch out for this case. This opens the door for ineffective assistance of counsel despite the language in Carrington. If parents are not provided assistance of counsel and it is not remedied, this may be reversible.

Guardian ad Litem

- Make sure that the parents are provided appointed counsel if they qualify. If not, make sure the record contains a written waiver or an order finding that parents waived the right to counsel.

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In re Victoria H., 2025 Tenn. App. LEXIS 280 (Tenn. Ct. App. July 30, 2025)

SUMMARY:

Child removed from mother and placed in physical custody of family friends and legal custody of family friends and grandmother. Eventually, grandmother gains custody and family friends file petition for custody. Grandmother files adoption and adoption granted.

Family friends appeal claiming that the juvenile court proceeding against grandmother should not have been dismissed.

COA finds that juvenile court proceeding was rendered moot by adoption order.

POSITIONS:

Parent's Attorney

- Adoptions trump all other cases. All other cases are stayed until adoption is complete and after completion, all other matters are rendered moot. Does this include d/n matters?

Guardian ad Litem

- In this case, the GAL removed the child from the family friends based upon environmental neglect. Remember that you must make home visits with the child during the pendency of the litigation...especially unannounced home visits.

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In re Gabby G., 2025 Tenn. App. LEXIS 293 (Tenn. Ct. App. Aug. 13, 2025)

SUMMARY:

Mother and ex-husband were married and child believed that ex-husband was her father. After divorce, mother and biological father enter into parenting plan agreeing to 50/50 and no child support. Ex-husband files step-parent petition asking for visitation.

Trial court grants ex-husband stepparent visitation but only during mother's visitation. Trial court does not enter findings of fact & conclusions of law due to the fact that the parenting plan submitted by biological parents was agreed.

COA remands back to trial court finding that this was not an Agreed Order. COA further finds that trial court is not bound by agreed order submitted by parents.

POSITIONS:

Parent's Attorney

- Simply because the parents are in agreement does not mean that the trial court is bound by the agreed order. The trial court should make findings of fact and conclusions of law just in case the matter is taken up on appeal.

Guardian ad Litem

- This case is not unique. There are many cases in which a step parent is believed to be the real parent from the child's perspective. Remember that best interest must be analyzed in all cases involving custody.

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In re Toni S., 2025 Tenn. App. LEXIS 294 (Tenn. Ct. App. Aug. 14, 2025)

SUMMARY:

Mother tests positive for cocaine in 7th month of pregnancy and enters program remaining sober until giving birth. At birth, mother returns to relationship with boyfriend and begins using again. Child eventually removed and DCS files TPR alleging (1) abandonment, (2) substantial noncompliance, (3) persistence, (4) severe abuse, and (5) failure to manifest. Trial court denies all grounds and denies best interest.

COA reverses on all grounds except severe abuse which DCS conceded. COA also reverses best interest finding

POSITIONS:

Parent's Attorney

- This case is a great example of arguments used by the parents to defeat all of the grounds mentioned; however, it also shows how the petitioner can prove the grounds. Use this to craft your arguments and foresee the arguments at trial and on appeal

Guardian ad Litem

- Never give up! In this case, the trial court denied all the grounds. Remember that you only need one to win a TPR.

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THANK YOU

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