



32nd Annual Joint Conference on Juvenile Justice
Chattanooga Convention Center
August 2-4, 2015
TCJFCJ Agenda

Sunday, August 2, 2015		
1:00	4:00	<p align="center">Exhibitors Convention Center Banquet Rooms E, F, G</p>
2:00	3:00	<p align="center">TJCSA Executive Committee Meeting Convention Center-Meeting Room 1</p>
3:00	4:30	<p align="center">TCJFCJ Early Registration Convention Center North Rotunda, upstairs</p>
4:00	5:30	<p align="center">TJCSA Hospitality Suite Marriott Hotel Tennessee River Room (Marriott connected to the Convention Center)</p>
4:30	5:30	<p align="center">TCJFCJ Executive Committee Meeting Convention Center-Meeting Room 1</p>
6:00	8:00	<p align="center">TJCSA President's Reception Convention Center Banquet Rooms H, I, J</p>
9:00	12:00	<p align="center">TJCSA Social Activity Convention Center Banquet Rooms H, I, J</p>
Monday, August 3, 2015		
7:30	4:30	<p align="center">TCJFCJ Registration Convention Center North Rotunda, upstairs</p>
7:30	9:00	<p align="center">Continental Breakfast (TCJFCJ only) Convention Center Rooms 4 & 5</p>
8:00	5:00	<p align="center">Exhibitors Convention Center Banquet Rooms E, F, G</p>
8:30	8:45	<p align="center">Opening Remarks <i>Chief Justice Sharon Lee</i> <i>Judge Robert Lincoln, TCJFCJ President</i> <i>Deborah Taylor Tate, Director AOC</i> Convention Center Rooms 4 & 5</p>
8:45	10:15	<p align="center">Make Your CANS Count "Child & Adolescent Needs and Strengths" <i>Kathy Gracey, M.Ed., Vanderbilt Center of Excellence</i> <i>Angela Kranhold, Department of Children's Services</i> Convention Center Rooms 4 & 5</p>
10:15	10:30	<p align="center">Break/Exhibitors/Networking Convention Center Banquet Rooms E, F, G</p>
10:30	11:45	<p align="center">Distracted Driving <i>Doug & Pat Ralls</i> <i>Officer William Reape, Brentwood Police Department</i> Convention Center Rooms 4 & 5</p>
11:45	12:00	<p align="center">Break/Exhibitors/Networking Convention Center Banquet Rooms E, F, G</p>
12:00	1:30	<p align="center">Awards Luncheon (Joint with TJCSA) <i>United States Senior District Judge Curtis Collier</i> Convention Center Banquet Rooms H, I, J</p>



Monday, August 3, 2015, continued		
1:30	1:45	<p>Break/Exhibitors/Networking Convention Center Banquet Rooms E, F, G</p>
1:45	3:00	<p>Case Law & Legislative Update <i>Doug Dimond, Esq., General Counsel, Tennessee Department of Children's Services</i> <i>Rachel Buckley, Esq., Assistant Attorney General, Office of the Attorney General and Reporter, General Civil Division</i> Convention Center Rooms 4 & 5</p>
3:00	3:15	<p>Break/Exhibitors/Networking Convention Center Banquet Rooms E, F, G</p>
3:15	4:30	<p>TLAP Presents: A Healthy Bar and Judiciary <i>Judge John Everett Williams, Court of Criminal Appeals</i> <i>Bill Leary, Esq.</i> <i>Stephenson Todd, Esq.</i> Convention Center Rooms 4 & 5</p>
4:30		<p>Adjournment</p>
6:00	12:00	<p>TJCSA Hospitality Suite Marriott Hotel Tennessee River Room (Marriott connected to the Convention Center)</p>
9:00	12:00	<p>TJCSA Social Activity Marriott Hotel Tennessee River Room (Marriott connected to the Convention Center)</p>
Tuesday, August 4, 2015		
7:30	4:30	<p>Registration Convention Center North Rotunda, upstairs</p>
7:30	9:00	<p>Continental Breakfast (Joint with TJCSA) Convention Center-Banquet Rooms E, F, G</p>
8:30	10:15	<p>The Implementation, Impact, and Effects of the New Human Trafficking Laws in Tennessee <i>Jimmy Musice, Staff Attorney & Legislative Liaison, Tennessee Bureau of Investigation</i> <i>Jamesena Rutherford, Special Agent, Tennessee Bureau of Investigation</i> Convention Center Rooms 4 & 5</p>
10:15	10:30	<p>Break/Exhibitors/Networking Convention Center-Banquet Rooms E, F, G</p>
10:30	12:00	<p>DCS Processes and Procedures—What Judges Need to Know <i>Agnes Trujillo, Esq. Regional General Counsel, Tennessee Department of Children's Services</i> Convention Center Rooms 4 & 5</p>
12:00	12:15	<p>Break/Exhibitors/Networking Convention Center-Banquet Rooms E, F, G</p>
12:15	1:15	<p>Judicial Luncheon & Business Meeting Convention Center-Banquet Rooms H, I</p>
1:15	1:30	<p>Break/Exhibitors/Networking Convention Center-Banquet Rooms E, F, G</p>



Tuesday, August 4, 2015, continued								
1:30	3:00	<p align="center">“Keys to Improving Access to Mental Health Services in Your Community” <i>Judge Steven Hornsby</i> <i>Dr. Jeff Feix, TDMHSAS</i> <i>Altha J. Stewart, M.D., Director, System of Care - Office of Shelby County Public Defender and Administrator - Just Care Family Network</i> <i>Keri Virgo, Systems of Care Project Manager, TDMHSAS</i> <i>Ellyn Wilbur, Executive Director, TAMHO</i> <i>Alysia Williams, Director of Policy & Advocacy, TAMHO</i> Convention Center Rooms 4 & 5</p>						
3:00	3:15	<p align="center">Break/Exhibitors/Networking Convention Center Banquet Rooms E, F, G</p>						
3:15	4:30	<p>TCJFCJ/TJCSA Joint Breakout Sessions</p> <table border="1"> <thead> <tr> <th align="center"> Joint Session 1 Convention Center Room 4 </th> <th align="center"> Joint Session 2 Convention Center Room 5 </th> <th align="center"> Joint Session 3 Convention Center Rooms 7 & 8 </th> </tr> </thead> <tbody> <tr> <td> <p>“Engaging & Supporting Families in Juvenile Justice Treatment” <i>Dr. Sheila Peters,</i> <i>Fisk University</i></p> </td> <td> <p>“Child Abuse & Domestic Violence: What Are We Missing & How This Impacts Parenting Plans” <i>Dr. Jennifer Hanket</i> & <i>Carrie Niederhauser, MSW</i></p> </td> <td> <p>“Early Brain Development & Why it Matters for Me ” <i>Melissa McGee,</i> <i>TCCY</i></p> </td> </tr> </tbody> </table>	Joint Session 1 Convention Center Room 4	Joint Session 2 Convention Center Room 5	Joint Session 3 Convention Center Rooms 7 & 8	<p>“Engaging & Supporting Families in Juvenile Justice Treatment” <i>Dr. Sheila Peters,</i> <i>Fisk University</i></p>	<p>“Child Abuse & Domestic Violence: What Are We Missing & How This Impacts Parenting Plans” <i>Dr. Jennifer Hanket</i> & <i>Carrie Niederhauser, MSW</i></p>	<p>“Early Brain Development & Why it Matters for Me ” <i>Melissa McGee,</i> <i>TCCY</i></p>
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Total CLE available: 11.25 hours

2015 Upcoming Conferences:

Fall TGSJC
 September 16-18, 2015
 Marriott, Cool Springs in Franklin

2016 Upcoming Conferences:

Mid-Winter TCJFCJ & TGSJC
 February 21-24, 2016
 DoubleTree, downtown Nashville

Distracted Driving **Kills**

Distracted Driving Kills

**If You're Driving,
Hang Up Your Phone**



Distracted Driving **Kills**

It was Wednesday, just a normal,
beautiful Fall day...

Distracted Driving **Kills**

...and my phone rang...

Distracted Driving **Kills**

- You know that texting isn't safe.
- It's the "perfect storm" of distraction, and against the law.
- Do you think it's safe to use your cell phone while driving?
- It isn't. It's equivalent to driving with a .08 BAC. (Univ. of Utah)
- **FACT:** More than 7 times as many crashes occur because people were talking on cell phones than texting. (Natl. Safety Council)

Distracted Driving **Kills**

**It's also illegal for drivers under the age of
18
to use their cell phone in any way while
driving!**

Distracted Driving **Kills**

What Do the Experts and the Scientists Say?

Distracted Driving **Kills**

It's estimated that 1 in 4 crashes (1.3 million a year) involves a driver talking or texting on a cell phone.

-(National Safety Council)

Distracted Driving **Kills**

Over the past 5 years, the U.S. has seen a 42% increase in distracted driving fatalities.

-(Network of Employers for Traffic Safety)

Distracted Driving **Kills**

Using a cell phone while driving reduces the amount of brain activity focused on driving by 37%.

-(Carnegie Mellon University)

Distracted Driving **Kills**

So how is Tennessee doing?

We are the 6th deadliest state for driving fatalities
We are the most dangerous state for teen traffic deaths.



Distracted Driving **Kills**

We are 163 times more likely to be involved in a crash if we talk, text or access the internet behind the wheel.

-(NTSB)

Distracted Driving **Kills**

Education about the use of seatbelts began in 1966.

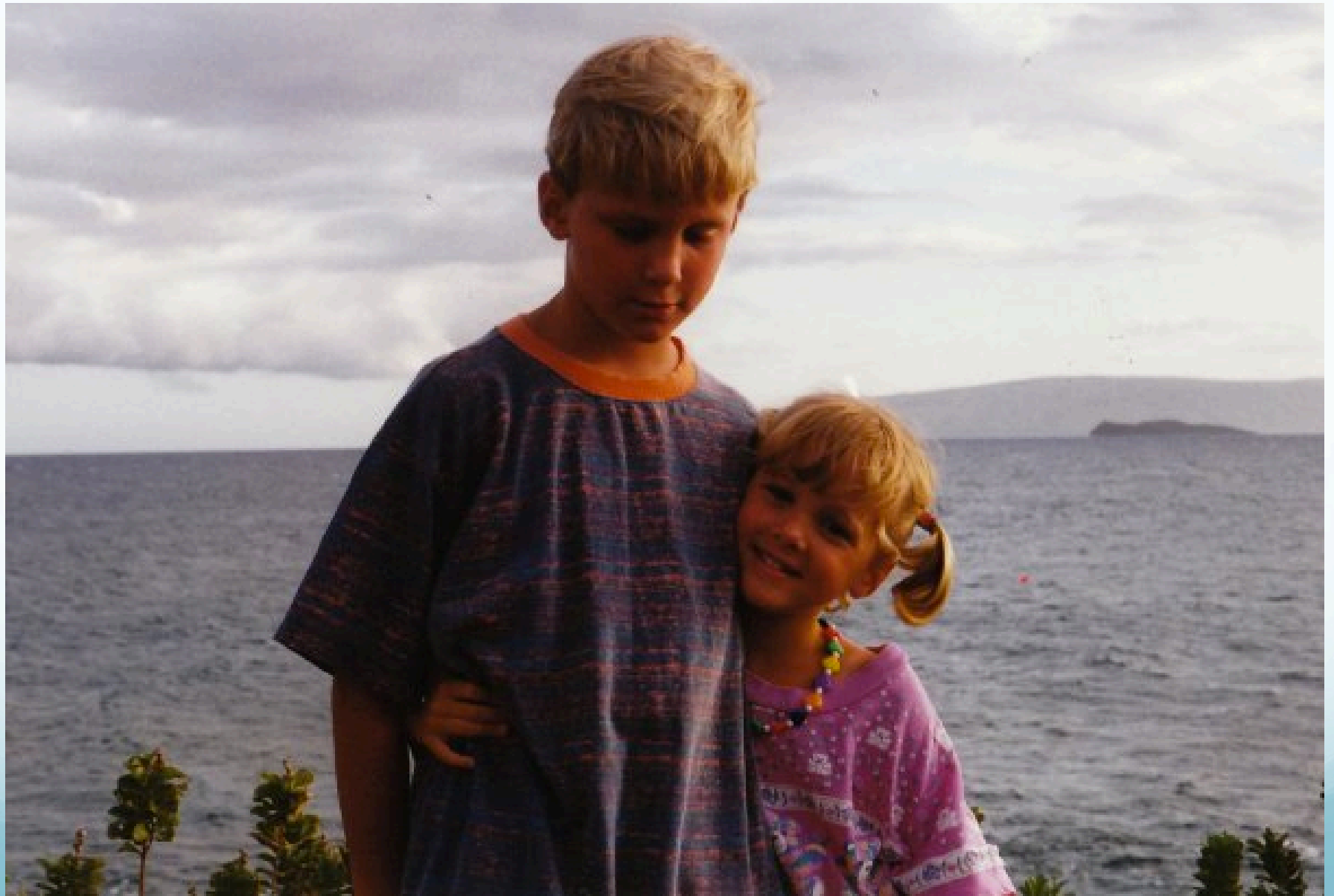
- **In 1981, only 14% of Americans wore them.**
- **In 1996, 61% of Americans wore them.**
- **In 2012, 84% of Americans wore them.**

Distracted Driving **Kills**

- **The point is, education about cell phone use while driving is just beginning.**
- **20 years from now, this behavior will be rare and socially unacceptable, and we'll all wonder how we could have been so careless.**
- **Will you be a leader or a follower?**

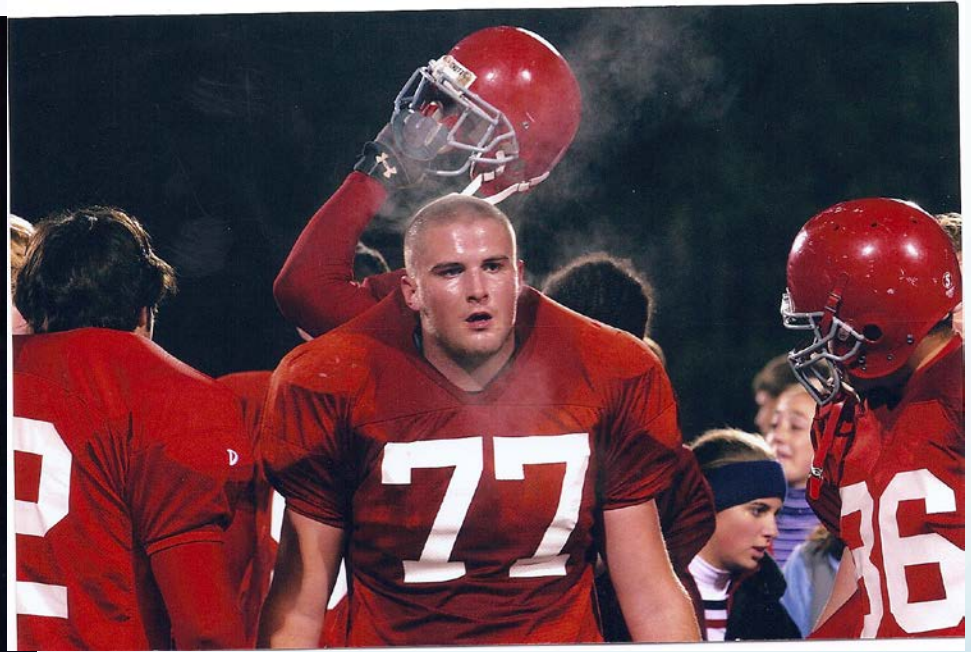
Distracted Driving **Kills**

- **It's not just about facts and statistics.**
- **It's very personal when it's a friend or a family member.**

















Brian
Patrick
Ralls

September 24, 1986
October 28, 2009

Distracted Driving **Kills**

- Today, 14 states, DC and 3 US Territories ban the use of hand held devices.
- 34 others have partial bans.
- 46 states ban texting while driving.
- 2 others have partial bans.
- Laws are important, but they aren't everything...
- It's time for **YOU** to make a difference.

Distracted Driving **Kills**

According to the National Highway Traffic Safety Administration (NHTSA), current scientific research indicates that using a wireless phone while driving degrades a driver's performance, whether with a hands-free or hand-held wireless phone. NHTSA advises that the safest course of action is to refrain from using a wireless phone while driving.

Consider turning your phone off and allowing calls to go to voicemail while driving—for your safety and that of those around you.

Distracted Driving **Kills**

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-Verizon Wireless Website

Distracted Driving **Kills**

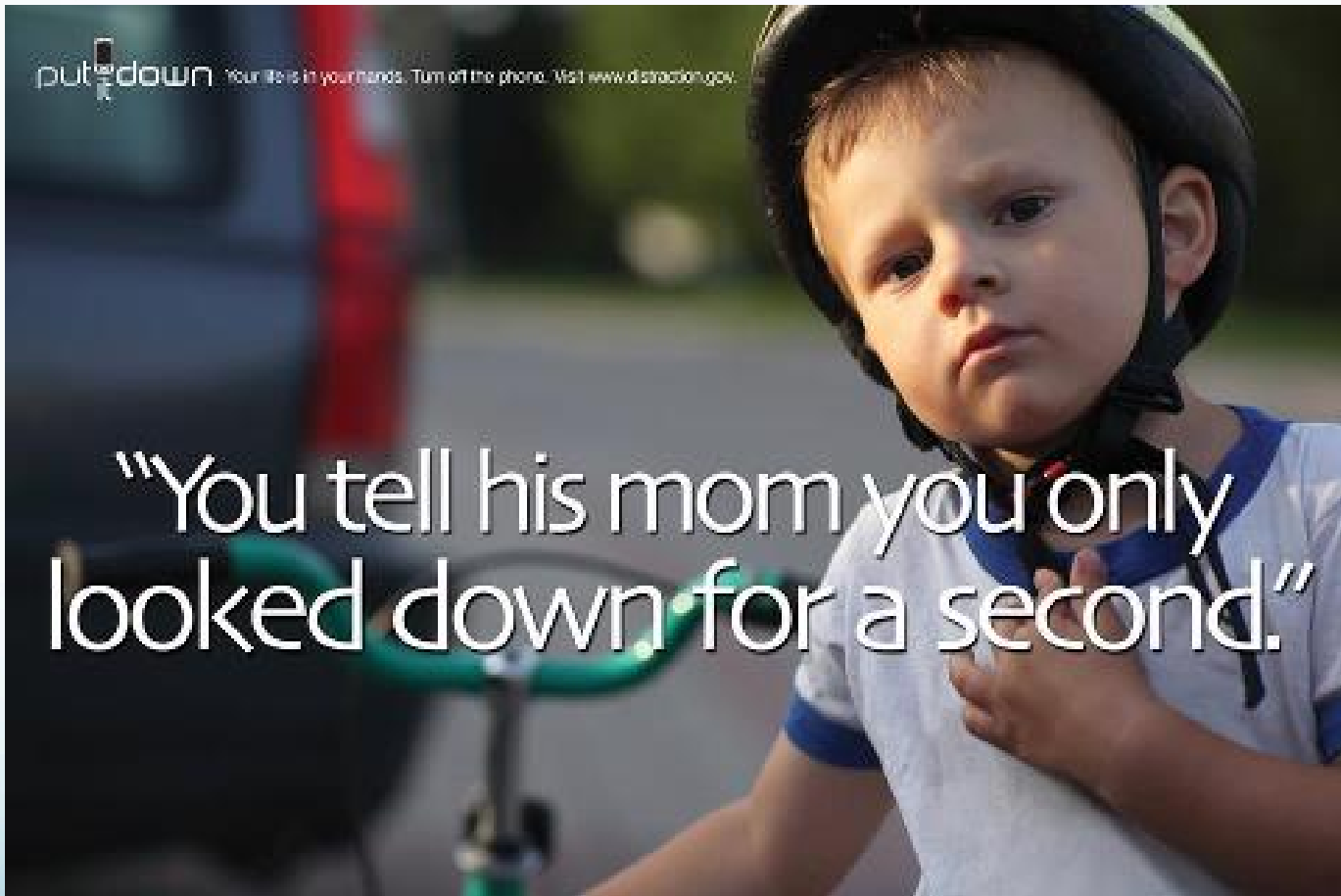
- So what can you do?
- Take the pledge yourself.
- Talk to your friends and family. Even in the car.
- Stay informed.
- www.DistractedDriving.gov

facebook

Stop Phoning and Driving - In Memory of Brian

put  down Your life is in your hands. Turn off the phone. Visit www.distraction.gov

"You tell his mom you only
looked down for a second."



Case Law Update for
Termination of Parental Rights and Related Cases
Presented by
Douglas Earl Dimond
General Counsel
State of Tennessee, Department of Children's Services

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***Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).**

Obergefell v. Hodges, ___ S.Ct. ___, 2015 WL 2473451 (2015) This case is actually a combination of several cases that came to the Supreme Court from the four states of the Sixth Circuit – Tennessee, Kentucky, Ohio, and Michigan. The petitioners, same sex couples, presented two issues under the Due Process Clause of the Fourteenth Amendment to the United States Constitution: first, whether one state may constitutionally prohibit same-sex marriage; and second, whether a state may constitutionally refuse to recognize a same-sex marriage lawfully performed in another state.

The 5-4 majority opinion was written by Justice Kennedy, who is frequently the “swing vote” on the current court. It noted that throughout history, marriage has been the bedrock social institution, promising “nobility and dignity to all persons.” Of course, the historical understanding of marriage has been as “a union between two persons of the opposite sex.” However, the same-sex petitioners in this case were seeking not to devalue the historic importance of marriage but to seek for themselves its privileges and responsibilities denied them because of “their immutable nature.”

The majority observed that marriage has evolved throughout time. For instance, women are no longer considered legal inferiors within a marriage. Similarly, the national view of gays and lesbians has recently liberalized, and in 2003 the Supreme Court struck down laws prohibiting homosexual acts.

The Due Process Clause prohibits states from depriving “any person of life, liberty, or property without due process of law.” Among the fundamental liberties protected are intimate choices that define identity and belief. The judicial branch of government identifies those fundamental rights, such as the right to marry. Thus, the Supreme Court has invalidated laws against interracial marriage.

Four “principles and traditions led the majority to conclude that same-sex marriage is a fundamental liberty. The first is the right to personal choice inherent in the concept of individual liberty. The second is that the right to marry supports a two-person union of unparalleled importance to the committed individuals. The third is that marriage safeguards children and families, and children of couples not permitted to marry are stigmatized by knowing their families are somehow lesser. Fourth, marriage is the keystone of social order, and society provides many material benefits to married couples from which same-sex couples who cannot marry are excluded. The majority concluded that the right to marry springs not only from history and tradition, but also from a “better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era.”

The majority also noted that the due process right to same-sex marriage also has some grounding in the constitution’s guarantee of equal protection, which the Court had already employed to invalidate bans on interracial marriage. The “synergy”

between the two protections is illustrated by the Court's invalidation of a law barring marriage to a father who is behind on child support payments. The Court has "recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged." Accordingly, applying the four principles that guide the Court in its discovery of new due process liberties and their accompanying equal protection synergy, the Court employed its new insights and understandings to declare that the Fourteenth Amendment bestows the right to marry upon same-sex couples.

Four separate dissents sharply disagreed. Chief Justice Roberts noted that while the institution of marriage may have changed, its core structure -- one man, one woman -- has endured until now. The Chief Justice wrote that the Court's proclamation of unenumerated fundamental rights marked a return to "Lochnerism," a discredited series of early twentieth century cases in which the Court discovered in the Constitution certain economic liberties that are nowhere to be found in its text. Most of all, the Chief Justice deplored the Court's "extravagant conception of judicial supremacy" in unilaterally upending thousands of years of history and the laws of the majority of the states. Asked the Chief Justice, "Just who do we think we are?"

Justice Scalia criticized the opinion as "constitutional revision by an unelected committee of nine." He focused the unrepresentative and patrician character of a

Court composed of Ivy League lawyers from nation's progressive coasts, lacking a single Protestant, let alone an evangelical Christian. He characterized the decision as a judicial Putsch.

Justice Thomas wrote that the Fourteenth Amendment protects "liberty," i.e., the freedom from governmental action, not the right to a particular government entitlement, in this case the privileges that exist because of marriage. The Fourteenth Amendment in his view protects only the liberties to which same-sex couples are already entitled, such as the right to make vows and hold religious marriage ceremonies. He spurned the notion that governmental recognition would advance the "dignity" of same-sex couples, writing, "human dignity cannot be taken away by the government. Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved. Those held in internment camps did not lose their dignity because the government confined them The government cannot bestow dignity, and it cannot take it away."

Justice Alito criticized the majority's understanding of marriage as institution focused on the happiness of the married couple, writing that the marriage is historically linked to "the one thing that only an opposite-sex couple can do: procreate." He recognized that the traditional tie and marriage has begun to fray, but also recognized the states' stake in preserving traditional marriage "in order to encourage procreative conduct to take place within a lasting unit."

***In re Dayton R., et al.*, 2015 WL1828039 (Tenn. Ct. App. at Jackson, April 21, 2015) from the Henderson County Juvenile Court.**

This case involves a petition for grandparent visitation filed by great-grandparents at issue. The children at issue were born in 2003 and 2006. They were adjudicated dependent and neglected in 2007. The maternal and biological great-grandparents, Mr. and Mrs. M., were awarded temporary custody and housed the children for the next six years. The biological parents regained custody in 2014.

Mr. and Mrs. M filed a petition for grandparent visitation on March 31, 2014. The biological parents filed separate responses opposing the petition. The children's mother asserted that great-grandparents do not have standing to seek grandparent visitation pursuant to 36-6-306, and therefore the court lacked subject matter jurisdiction.

The trial court heard the petition in June 2014. In September 2014, the court entered an order finding that Mr. and Mrs. M. did not fall within the definition of grandparents under Tennessee law so they lacked standing to petition for visitation rights. Thus, the court did not have subject matter jurisdiction to award them visitation. Mr. and Mrs. M. appealed.

The issues presented on appeal were as following: (1) Whether the trial court erred in denying the petition for grandparent visitation because Mr. and Mrs. M. are great-grandparents; and (2) Whether the trial court erred in refusing visitation when substantial harm to the children would result

from the denial of same. The Court reversed the juvenile's court decision and remanded.

Tennessee's grandparent statute provides a mechanism for a grandparent to file a petition for visitation and includes the following guidance with regard to the term "grandparent;" (e) Notwithstanding any law to the contrary, as used in this section and in 36-6-307, with regard to the petitioned child, the word "grandparent" *includes, but is not limited to:* (1) A biological grandparent; (2) The spouse of a biological grandparent; or (3) A parent of an adoptive parent (Tenn.Code Ann. 36-6-306). (Emphasis added by the Court.)

The original version of the grandparent visitation statute did not include the italicized language. Prior to the addition of subsection (e), in *McClure v. McClure* in 2000, a trial court awarded visitation to a great-grandmother. The Court of Appeals reversed that award, finding that the grandparent visitation statute did not address visitation for a great-grandparent.

After the legislature added the italicized language, the Tennessee Supreme Court considered the issue of standing under Tennessee's grandparent visitation statute in *Lovelace N. Copely* (Tenn.2013). The Court held that the "includes, but not limited to" addition clearly evinced the Legislature's intent *not* to limit the statutory definition of "grandparent" to only the three listed categories. The court held in favor of the child's biological father's adoptive mother and her husband, finding that they had

standing even though neither of them were biologically related to the child.

In this case, the Court found that Mr. and Mrs. M. are lineal ancestors of the children, are biologically related to them, and,

***Manning v. Manning*, 2015 WL 1115037 (Tenn. Ct. App. at Nashville, Mar. 10, 2015) from the Maury County Chancery Court.**

This is a grandparent visitation case. After Mother and Father divorced, Father was convicted of stalking Mother. He had no visitation with Child and was sporadically in jail throughout Child's life. In October 2013, Grandparents filed a petition for grandparent visitation, alleging that Mother had completely discontinued their visitation with Child. Mother filed an Answer, arguing that she had never opposed Grandparent's visitation with Child and that "Grandparents' petition was merely a subterfuge to allow Father to obtain visitation with" Child.

At trial in April 2014, Grandmother testified that Mother and Child had lived with Grandparents for approximately a year while Father was incarcerated. Mother then moved, but continued to allow Grandmother to babysit Child and allowed Child to have frequent overnight visits with Grandparents. Grandmother also testified that after June 2012, Child no longer stayed overnight with Grandparents, and even though Grandparents requested visitation multiple times, Mother always responded that Child already had plans. On the other hand, Mother testified that Grandparents rarely requested visitation, and when they did, they

therefore, are within the group of people contemplated in Section 36-6-306(e)(1). The Court held that Mr. and Mrs. M. have standing to seek grandparent visitation and the trial court had subject matter jurisdiction over their petition.

always requested overnight visitation. When Mother would suggest visitation at a park or restaurant, Grandparents declined.

Finally, Mother testified that the less frequent visits with Grandparents had not had any adverse effects on the Child, but rather the Child was a healthy, normal child. She also testified that she feared that if she allowed Grandparents to visit with Child more frequently, they would expose Child to Father, who was involved with illegal drugs. Grandparents testified that if the court ordered that Father not be allowed to visit with Child, Grandparents would abide by the court's order.

On May 8, 2014, the trial court entered an order holding that because Child had resided with Grandparents for twelve consecutive months, Grandparents were entitled to "a rebuttable presumption that denial of visitation may result in irreparable harm to the child." The court concluded that Mother had failed to present evidence to rebut such presumption, and that Grandparents had shown that Child would suffer substantial harm without a relationship with Grandparents. Finally, citing the factors provided in Tenn. Code Ann. § 36-6-307, the trial court found that Grandparent

visitation was in the best interest of the Child, thus requiring Grandparent visitation one Friday evening every month and one continuous five day period during the summer. Mother appealed.

The Court of Appeals began its analysis by reiterating that because parents have a fundamental right to the care and custody of their children, grandparent visitation statutes must be narrowly construed. Tennessee's grandparent visitation statute, Tenn. Code Ann. § 36-6-306, requires several procedural hurdles to be met, including proof from the petitioning grandparents that the custodial parents have denied visitation. The Court then noted that although precedent regarding what proof is required to show a denial of visitation is limited, previous cases have provided that "imposing limitations and conditions on once liberal visitation" is not sufficient to constitute opposition to visitation. Furthermore, the Court of Appeals made it clear that a parent's motivation for a decrease in visitation is irrelevant, and a trial judge must resist the urge to become a "super-parent," as the state may not infringe upon a parent's

fundamental right to raise her child simply because the trial judge believes a better decision could have been made.

Here, the Court of Appeals determined that the trial court made no specific finding that Mother opposed visitation, as is required by Tenn. Rule Civ. P. 52.01. Although the trial court found that there had been "some deprivation" of visitation, it was not enough to support a conclusion that Mother opposed visitation. The Court of Appeals further held that because Mother and Grandparents disputed whether Mother had offered visitation and Grandparents had refused, the trial court's failure to make specific findings, including credibility findings, was fatal to appellate review. The Court of Appeals ultimately held that "the question of whether Mother, in fact, offered Grandparents supervised visitation, whether that offer was reasonable, and whether Grandparents declined that visitation, must be resolved in order to determine whether Mother's actions can be fairly characterized as opposing visitation." The trial court's decision was vacated, and the case was remanded for further proceedings.

***In re Cloey R. et al.*, 2015 WL 273685 (Tenn. Ct. App. at Knoxville, January 21, 2015) from the Rhea County Juvenile Court.**

This is a DCS termination of parental rights appeal. On July 26, 2012, a referral was made to DCS alleging environmental neglect and exposure of Cloey, 6, and Andrea, 5, to controlled substances. The referral was to the maternal grandmother's house where Mother and the children were living. At the time of the referral, Mother

was incarcerated on drug-related charges and Grandmother was caring for the children.

DCS investigator Stephanie Raulston investigated Grandmother's home on July 26, 2012. The house was deemed unsuitable, with broken glass, animal feces and roaches. The girls had no clothes in their closet, no

sheets on the bed, and no toys. Cloey testified that Mother sold all their toys. The girls appeared dirty, and stated they did not know the last time they'd had a bath. Cloey told Ms. Raulston that she had not seen Father because he beat up her mom. Andrea stated she witnessed her mom and dad punching each other.

During Grandmother's interview, she stated that she knew her home was inappropriate. Grandmother was screened for drugs and tested positive for multiple narcotics. She did not offer any family members besides one unsuitable relative for foster placement, and denied knowing Father's whereabouts. The Children were placed in a non-relative foster home on July 26, 2012.

On July 27, 2012, Ms. Raulston interviewed Mother at the jail. Ms. Raulston testified that Mother claimed not to know Father's whereabouts, but stated that he was abusive. On August 1, 2012, Father appeared at the DCS office asking for information. Ms. Raulston reported that Father disclosed to her a lengthy criminal history. At the time of the children's removal, Father faced a pending charge of arson and was subject to a domestic bond upon an allegation of domestic violence.

DCS case manager Christina Walsh testified that Father's responsibilities were laid out in a permanency plan established on August 23, 2012. However, no permanency plan was admitted into evidence at trial and no permanency plan was in the appellate record. The record also contained no date of entry for the trial court's ratification of any plan. Subsequently, Father incurred drug-related criminal charges and pled guilty to

arson and possession of less than .5 grams of methamphetamine. He received a combined effective sentence of four years, including one year of incarceration. While the children were in DCS's custody, Father had been incarcerated five times. .

The children were adjudicated dependent and neglected as to both parents on December 20, 2012. The permanency plan was revised on April 22, 2013, with Father present. DCS added the goal of adoption in the event that reunification efforts proved unsuccessful. On May 16, 2013, DCS filed a petition to terminate the parental rights of Mother and Father, alleging grounds of (1) both parents' abandonment through failure to visit, (2) both parent's abandonment through failure to support, (3) both parents' noncompliance with the permanency plan, (4) Father's abandonment through wanton disregard for the Children's welfare, and (5) as to Cloey, Father's failure to establish paternity.

On November 7, 2013, the trial court conducted a bench trial. Father, although incarcerated, appeared. Mother failed to appear. In an order entered April 15, 2014, the trial court terminated the parental rights of both parents. As relevant to Father's appeal, the trial court found that Father (1) failed to comply with the permanency plan and (2) failed to legitimate Cloey. The court further found that it was in the best interest of the children to terminate parental rights.

On appeal, Father presented four issues: (1) whether the trial court properly exercised personal jurisdiction in terminating Father's parental rights to Cloey; (2) whether the court erred by finding that Father failed to

comply with the permanency plan and was afforded a reasonable time in which to do so; (3) whether the court erred by finding that DCS made reasonable efforts to assist Father in complying with the permanency plan; and (4) whether the court erred by finding that it was in the best interest of the Children to terminate Father's parental rights.

In respect to the first issue, Father asserted that the trial court lacked personal jurisdiction over him to terminate his parental rights as to Cloey since no claim of legitimacy was ever established. The Court held that the trial court properly exercised personal jurisdiction. Father received proper service of process regarding the petition for termination, and he and the children were in Tennessee at the time of filing. Father also waived any objection to personal jurisdiction by making a voluntary general appearance before the court in order to defend the suit on the merits.

The Court held that the trial court properly exercised subject matter jurisdiction. Father claimed at all times to be the biological father of both Cloey and Andrea. He also voluntarily entered into a permanency plan to maintain the parental rights he claimed. Father did not dispute the trial court's jurisdiction over the action to terminate his parental rights to Andrea since he was listed as Andrea's father on her birth certificate. Although Cloey's birth certificate did not identify a biological father, Father nonetheless met the relevant statutory criteria of a putative biological father to Cloey pursuant to 36-1-117(c) because he (1) claimed to be Cloey's father to all parties

involved, and (2) entered a permanency plan regarding Cloey on August 23, 2012.

Father's appeal did not present the issue of whether the trial court erred by finding that his parental rights to Cloey should be terminated based upon the statutory ground of his failure to legitimate Cloey as his child. The Court addressed this issue because DCS cited the interplay of 36-1-117(c) and 36-1-113(g)(9) in defense of the trial court's exercise of jurisdiction. Having found that Father qualified as a putative biological parent to Cloey, the Court found that the trial court erred by applying the ground of failure to legitimate pursuant to 36-1-113(g)(9)(A)(vi). That ground provides additional grounds to terminate, in this case the failure that the parental rights of any person who, at the time of the filing of a petition to terminate the parental rights of such person, is not the legal parent or guardian.

The trial court stated that Father never followed through with legal legitimation of Cloey despite his assertion that he had DNA testing. Therefore, Father failed to legitimate Cloey, as required by law, which is ground for termination of his parental rights. The Court understood the trial court's reading of this statute, but noted that the Tennessee Supreme Court previously held that the grounds for termination in 36-1-113(g)(9) cannot be used to terminate the rights of a person who is a child's biological, legal or putative biological parent at the time the termination petition is filed.

In the instant case, the Court determined that Father qualified as a putative biological father to Cloey at the time the termination

proceeding was filed. Thus, the Court reversed the trial court's application of 36-1-113(g)(9)(vi) to terminate Father's parental rights to Cloey.

The Court then examined the terms of substantial noncompliance with the permanency plan. The trial court found clear and convincing evidence that Father failed to substantially comply with the reasonable responsibilities set out in the permanency plan. However, neither the original nor the revised permanency plan was admitted into evidence. The Court has continually held that when DCS relies on this issue as a ground for termination of parental rights, the plan must be admitted into evidence. Testimony alone is not sufficient, as Tenn. R. Juv. P. 28(c) requires the proper admission of documents into evidence before they can be considered. Courts must consider the permanency plan as evidence in determining this ground for termination. The Court held that DCS failed to meet its burden of proof regarding its allegations that Father failed to substantially comply with the permanency plan and accordingly

reversed the trial court's finding upon this statutory ground.

In respect to reasonable efforts by DCS, the Court held that because DCS did not carry its burden in proving the duties required of Father under the permanency plan by not admitting the plan into evidence, this issue is pretermitted as moot. The Court also found that the issue of whether terminating Father's rights was in the children's best interest was pretermitted as moot since the trial court's findings regarding statutory grounds for terminating Father's rights must be reversed.

The Court stressed that its reversal of the judgment terminating Father's parental rights to Cloey and Andrea did not affect physical custody of the children. The Court recognized that Father had six years remaining on probation and has a history of substance abuse and probation violations, and the children were thriving in their foster home. Accordingly, the Court left intact the trial court's prior order placing the children in DCS custody.

***In re Neveah W.*, 2015 WL 1542006 (Tenn. Ct. App. at Jackson, April 2, 2015) from the Shelby County Chancery Court.**

This case addresses the authority of an adoption court to direct placement of a child who is in the legal custody of the Department of Children's Services. Neveah, awarded to DCS as a dependent and neglected child in Shelby County Juvenile Court in 2011, was eventually placed by DCS with Foster Parents. Biological Mother visited sporadically during Neveah's three-

year placement with Foster Parents and their three other children. In April 2014, the Guardian Ad Litem petitioned the court to terminate Biological Mother's parental rights to Neveah. While awaiting the termination hearing, DCS received a report of abuse allegations made by one of Foster Parents' other children, Kara. Kara alleged Foster Parents locked her in her room,

forcing her to defecate and urinate without a toilet. DCS' ensuing investigation substantiated the abuse allegations and Neveah was removed from Foster Parents' home. Foster Parents subsequently surrendered Kara, but filed a petition to adopt Neveah with the Chancery Court.

In August 2014, the Chancery Court conducted an ex parte hearing regarding the substantiated abuse allegations. The court overturned the substantiation. It ordered Neveah to be physically placed with Foster Parents, though DCS retained legal custody. The trial court relied on Tenn. Code Ann. §36-6-116(f) in its order, ruling that the adoption petition gave it exclusive jurisdiction over all matters pertaining to the child, including placement.

DCS filed an extraordinary appeal challenging the power of the trial court to direct placement of a child who is in DCS custody. DCS argued that Tenn. Code Ann. §37-1-129(e)(1) empowers DCS to select any specific residential or treatment placements or programs for the child and that the trial court retains only the ability to *review* the placement arrangements made for the child and *issue a recommendation* of that selection.

***In re Anthony R.*, 2015 WL178859 (Tenn. Ct. App. at Nashville, June 9, 2015) from the Davidson County Juvenile Court.**

This is a private parental termination case, and the second appearance of this matter in the Court of Appeals. After the first trial to terminate Father's rights, an appeal was

Foster Parents and GAL argued that an adoption court has greater power under Title 36 sections 113 and 116(f)(1) and (k)(2)(A) "the court shall have *exclusive jurisdiction* of all matters pertaining to the child" and "the court *may make any necessary orders*...for the protection and welfare of the child" (emphasis added). Foster Parents and GAL, citing case law, assert the juvenile court statutes "cannot restrict the chancery court's exercise of absolute jurisdiction because it was not the intention of the Legislature [that a child] should be left to the arbitrary will ...of any child rearing agency".

The appellate court held that Tenn. Code Ann. § 37-1-129(e) specifically empowers DCS, not the court, to direct placement of children and specifically limits the trial court's power to mere recommendation concerning a DCS placement. The appellate court added that "nothing in the adoption statutes confers any additional power on the chancery court to direct placement of a child in DCS custody, while a juvenile court is merely allowed to make recommendations in a similar situation" and confirmed that Tenn.Code.Ann. 37-1-129(e) expressly limits the court's power to direct placement of a child in DCS custody.

taken in which the Court found that Father's rights were terminated upon a ground that was not pled. The trial court's judgment was reversed and remanded. On August 26,

2013, a second petition to terminate Father's parental rights was filed. It alleged abandonment by failure to visit, abandonment by failure to support, incarceration when confined under a sentence of ten years or more and the child is under eight, failure to make payments toward the support of the mother during the four months immediately preceding the birth of the child, and wanton disregard for the welfare of the child by engaging in illegal conduct that led to incarceration. Father filed an answer and sought to dismiss the petition based on res judicata.

The trial court held a hearing on December 4, 2013. On August 27, 2014, the trial court terminated Father's parental rights on the ground of wanton disregard. The trial court found that res judicata did not apply, and the other grounds were not supported by clear and convincing evidence. Father appealed.

The Court of Appeals found that Father's res judicata defense failed because of the fourth factor of the doctrine of res judicata: "that the underlying judgment was final and on the merits" (citing *Lien v. Couch*, Tenn. Ct. App. 1998). The decision of the trial court on the first petition did not address the grounds raised in the petition and ruled on a ground that was not pled. It also had been reversed and remanded. Thus, there was no final judgment on merits, and the doctrine of res judicata did not apply.

Father argued that the wanton disregard ground could not apply since he did not know of the existence of the child at the time he committed the acts leading to his incarceration. The Court examined the

statutory basis of the wanton disregard ground for termination of parental rights. The Court emphasized that the statutory language referencing wanton disregard in 36-1-102(1)(A)(iv) is not limited by the four-month requirement at the beginning of the section.

The statute does not define "wanton disregard." Instead, Tennessee courts have defined "wanton disregard" by examples. The Court noted that the actions that Tennessee courts have commonly found to constitute wanton disregard reflect a "me first" attitude. In the context of "wanton disregard for the welfare of the child," Tennessee courts have extended the definition of "child" to include the period of unknown pregnancy.

In this case, Father and Mother were not in a relationship. Father violated probation and was incarcerated May 30, 2007. The child was born in January 2008. Father maintained that he did not know Mother was pregnant until the child was born.

The issue was whether Father could exhibit a wanton disregard for the welfare of the child if he did not know the child existed. The Court held that the wanton disregard language of 36-1-102(1)(A)(iv) must be construed to require that the father has knowledge of the child at the time his actions constituting wanton disregard are taken. In this case, it was not proven that Father had such knowledge. The trial court's holding that Father abandoned the child pursuant to 36-1-102(1)(A)(iv) was reversed.

***Gooding v. Gooding*, 2015 WL 1947239 (Tenn. Ct. App. at Nashville April 29, 2015) from the Fentress County General Sessions Court.**

This case involves challenges to a parenting schedule established by a trial court. Mother and Father's only child was born in June 2013. Two months later, Father filed for divorce. A temporary parenting plan was established and adhered to until the divorce case was tried on June 26, 2014. At trial, Father proposed a parenting schedule that provided for equal parenting time between Mother and Father. However, Mother's counsel recommended adoption of the temporary parenting plan, which limited Father's parenting time to every other weekend and three hours every other Tuesday. On July 22, 2014, the trial court adopted the terms of the temporary parenting plan, but allowed Father additional parenting time in Summer 2014 and a third weekend per month to begin in September 2014. The trial court did not include any findings of fact in its order or oral ruling. Father appealed the parenting schedule as established by the trial court, arguing that the schedule was not supported by the evidence and that the trial court committed error by implicitly basing the schedule on the tender years doctrine (a presumption no longer recognized by Tennessee law which presumes that young children ought to remain in the custody of their mother).

The Court of Appeals began by discussing the abuse of discretion standard of review, which is applied when an appellate court considers a trial court's decision regarding a parenting schedule. The court noted that "trial courts' adjudicative decision-making is never completely shielded from appellate

review." See *Knaffl v. Knoxville Banking & Trust Co.*, 201 S.W. 775, 776 (1918). However, the abuse of discretion standard does restrain the scope of review and imply a "less intense appellate review. The standard conveys two points. First, a trial court has the authority to "choose among several legally permissible, sometimes even conflicting, answers." Second, an appellate court may not interfere with a trial court's decision "simply because it did not choose the alternative the appellate court would have chosen." The court identified a three-part analysis used to review a trial court's discretionary decisions. Such "decisions should be reviewed to determine: 1) whether the factual basis of the decision is supported by sufficient evidence; 2) whether the trial court has correctly identified and properly applied the applicable legal principles; and 3) whether the trial court's decision is within the range of acceptable alternatives." (Quoting *BIF, a Div. of General Signals Controls Inc. v. Service Const. Co., Inc.*, 1988 WL 72409 (Tenn. Ct. App. 1988)). The court noted that the three-part analysis clearly indicates that the "factual basis of a trial court's discretionary decision must be supported by sufficient evidence," but does not address what constitutes sufficient evidence. For further guidance, the court referenced a 2010 Tennessee Supreme Court decision where the Court stated "a court abuses its discretion when it causes an injustice to the party challenging the decision by 1) applying an incorrect legal standard, 2) reaching an illogical or unreasonable decision, or 3) basing its

decision on a clearly erroneous assessment of the evidence.” *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 525 (Tenn. 2010). Additionally, the Court in *Lee* indicated that a court reviewing a trial court’s discretionary decision should “review the underlying factual findings using the preponderance of the evidence standard contained in Tennessee Rule of Appellate Procedure 13(d) and should review the trial court’s legal determinations de novo without any presumption of correctness.” *Id.* After finding the three-part analysis to be a practical guide for review of discretionary decisions, the court considered whether the trial court met the requirements of the Tennessee Rules of Civil Procedure.

As amended in 2009, Tennessee Rule of Civil Procedure 52.01 requires that “in all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.” The court noted that a trial court does not fulfill this requirement by simply stating its decision, without more. *Barnes v. Barnes*, 2012 WL 5266382, 8 (Tenn. Ct. App. 2012). For cases where compliance with Rule 52.01 is required, the court stated that deference to a trial court’s decision may “abate when the record does not reveal which legal principles and facts the trial court relied upon in making its decision.” Because there were no factual findings for the court to review in the present case, it conducted a de novo review to determine if

the evidence presented at the divorce hearing provided factual support for the parenting schedule established by the trial court.

At trial, no evidence was introduced to challenge Father’s parenting abilities, or to indicate that Mother had superior parenting abilities. After reviewing the record, the appellate court found no evidence to support a finding that one parent was better suited to have more parenting time than the other. The court found no evidence to support the existing parenting schedule, which substantially limited Father’s parenting time. Given the lack of evidence to justify Mother receiving substantially more parenting time than Father, coupled with the General Assembly’s established goal of maximizing each parent’s participation in a child’s life, the Court of Appeals reversed and remanded the case to the trial court. On remand, the trial court was instructed to develop a parenting schedule that maximizes each parent’s participation in the child’s life (as informed by all of the relevant facts and circumstances presented to the trial court at the June 2014 hearing) and to identify the facts upon which that schedule is based—as required by Tennessee Rule of Civil Procedure 52.01.

Because the ruling rendered Father’s contention regarding the trial court’s application of the tender years doctrine moot, the court declined to address the issue.

***In Re Noah J.*, 2015 WL 1332665 (Tenn. Ct. App. at Jackson, March 23, 2015) from the Shelby County Juvenile Court.**

This case is a custody dispute between the unmarried parents of a two-year-old child. Mother and Father began dating in June 2012. Shortly thereafter, Mother became pregnant and moved into Father's apartment. The couple's child, Noah, was delivered in May 2013. When Noah was approximately three months old, Father moved out of the apartment and filed a petition for custody and visitation. Mother's response and counter-petition requested that Father's visitation be supervised and "non-overnight" due to his history of alcohol abuse and Mother's prior claims of domestic violence.

In February 2014, a Juvenile Court Magistrate entered recommendations that the parents have joint custody of Noah, with the "primary residential parent" designation to be alternated between the parents on a yearly basis. Once the Juvenile Court entered the recommendations as an order, Mother filed a request for rehearing. Mother's request was granted with a rehearing in June 2014. A new magistrate was appointed to hear the matter as "substitute judge" and "special judge" pursuant to Tenn. Code Ann. § 17-2-122(b).

At the rehearing, Father acknowledged his history of alcohol abuse but testified that he had not been intoxicated since completing a drug court program several years before Noah's birth. Father also presented: evidence of numerous passed drug screens, completion of a ten-week parenting program, witnesses who testified in support of Father's sobriety claims, and witnesses who testified that Mother was the physically

abusive partner. Mother's testimony was largely concerned with challenging Father's claims of sobriety. Once all proof had been submitted, the magistrate entered an order granting custody to Mother and leaving Father with only supervised visitation. Additionally, Father was ordered to pay Mother's attorney's fees. The order did not list or discuss any reasons in support of the court's custody decisions. Regarding attorney's fees, the order stated the award was based on "the entire record in the cause, and all of the factors set forth in Rule 1.5 of the Rules of Professional Conduct as set forth in Rule 8 of the Rules of the Supreme Court of the State of Tennessee.

Father timely appealed the attorney's fees and custody issues. For appellate courts reviewing a trial court's decision related to parenting arrangements, abuse of discretion is the standard of review. *See Eldridge v. Eldridge*, 42 S.W.3d 82, 88 (Tenn. 2001). The Court of Appeals considered whether the trial court erred by failing to make specific findings of fact. The court noted that trial courts are required to make "findings of fact and conclusions of law" to support their rulings. *Hardin v. Hardin*, 2012 WL 6727533, 3 (Tenn. Ct. App. 2012). For a reviewing court to determine whether a trial court abused its discretion there must be factual findings. Without findings of fact, an appellate court cannot "afford appropriate deference to the trial court's decision." *In re Connor S.L.*, 2012 WL 5462839, 4 (Tenn. Ct. App. 2012).

The Court of Appeals determined that the magistrate's oral comments made directly to Father (where magistrate says that he did not find Father's testimony credible) are "no substitute for specific written factual findings and conclusions of law" and do not "justify the court's parenting arrangement and to comply with the mandates of Rule 52.01." (Referring to Rule 52.01 of the Tennessee Rules of Civil Procedures). Mother's request that the court review the record independently to determine the appropriateness of the parenting arrangement was denied. The court noted that findings of fact and conclusions of law are particularly important for fact-intensive matters like parenting arrangements. The

court also stated that opinion did not prevent the parties from putting on additional evidence on remand. Such additional evidence may address how circumstances have changed since the entry of the original order.

Because the trial court did not make any findings of fact to explain its decisions regarding custody or the award of attorney's fees, the Court of Appeals vacated the trial court's order and remanded the case for entry of an order addressing these issues in compliance with Tennessee Rule of Civil Procedure 50.02. The court reinstated the February 2014 order pending entry of the trial court's order on remand.

In re Wesley P., 2015 WL 3430090 (Tenn. Ct. App. at Jackson, May 29, 2015) from the Chancery Court of Weakley County.

This is a private termination of parental rights appeal. The trial court terminated Mother and Father's parental rights on the ground of severe abuse. The child had initially been removed from parents in 2011 because the family was residing in a building where methamphetamine was being manufactured. In late 2011, Weakley County Juvenile Court entered an agreed order finding that the child was severely abused. On May 22, 2012, the juvenile court restored custody of the child to Father and Mother.

In early 2013, DCS received a new referral that Parents were manufacturing methamphetamine in Carroll County, to where they had moved. During the investigation, Mother and the child tested

positive for methamphetamine. Both parents faced criminal charges stemming from the drug activity. Father was sentenced to 11 months, 29 days of supervised probation following his plea of no contest to the charge of reckless endangerment. Mother was sentenced to 12 months in jail and several years of probation after pleading guilty to aggravated child neglect, misdemeanor theft, and promotion of methamphetamine. In lieu of jail time, Mother agreed to participate in a one-year program at an inpatient drug rehabilitation center. On April 29, 2013, DCS petitioned the Weakley County Juvenile Court to transfer legal custody of the child to DCS, but to allow the child to remain in the family's home contingent on parental compliance with the non-custodial

permanency plan. On May 31, 2013, DCS filed an amended petition requesting that the child be removed from Parent's custody and placed with DCS due to parental non-compliance with the permanency plan. On the same date, the juvenile court entered an ex parte order of protection placing the child in DCS custody.

On July 19, 2013, DCS filed a petition to terminate Mother and Father's parental rights in Weakly County Chancery Court on the ground of severe abuse. Trial took place on September 18, 2014. The investigating police officer testified that substantial evidence of methamphetamine production was uncovered during his search of Parents' home. The family's DCS caseworker testified that mother and child's drug screens had tested positive for methamphetamine and that Father had failed to maintain contact with DCS. Testimony from Mother and a licensed clinical social worker indicated that Mother had made significant progress at the rehabilitation center and was scheduled to graduate in November 2014. All counselors and DCS workers testified that Father had complied with all DCS requirements (other than a failed drug screen following the child's removal), attended all visitations, and maintained a healthy relationship with his child. Ultimately, the trial court ruled that the ground of severe abuse had been proven as to both parents. Additionally, the court determined that termination of both Mother and Father's parental rights was in the child's best interest.

On appeal, Mother first contended that the trial court erred by denying her motion to

dismiss the termination petition based upon improper venue. Weakley County was the venue for the termination proceedings, even though neither Parents nor the child resided in that county when the petition for termination was filed. The Court of Appeals did not find the venue improper. The child lived in Weakley County when he first came into DCS custody, and Tenn. Code. Ann. Section 36-1-114 provides that a termination petition can be filed in the county "where the child resides when the child became subject to the care and control of a public or private child-caring or child placing agency." The court noted that nothing in the statute or case law indicates the provision is limited to the child's residence immediately preceding removal.

Second, Mother argued the trial court erred when it found that the ground of severe abuse was met. In response, the Court observed that both Mother and Father's prior involvement in methamphetamine production was undisputed. Both parents agreed that their behavior constituted severe abuse. As provided in Tenn. Code Ann. Section 37-1-102(b)(21)(D), severe child abuse includes "knowingly allowing a child to be present within a structure where the act of creating methamphetamine... is occurring." After reviewing the evidence provided by various witnesses at trial, coupled with the trial court's credibility findings related to those witnesses, the Court concluded that there was clear and convincing evidence to establish the ground of severe abuse.

Finally, both Parents argue it was error for the trial court to conclude that termination of

their parental rights was in the best interests of the child. When presented with the best interest question, the trial court required additional briefing from the parties before rendering its decision. The Court considered the factors provided in Tenn. Code Ann Section 36-1-113(i) and determined that the trial court erred in ordering the termination of both Mother and Father's parental rights. Testimony at trial showed that Parents maintained a meaningful relationship and regular visitation with the child. There was no record indication that Father or Mother's mental or emotional status prevented them from parenting the child. Mother had maintained her sobriety since the child's

removal and the Court could not "conclude that Mother's inability to guarantee that she will remain sober is clear and convincing evidence to support a finding that the child's best interests would be better served by terminating his relationship with Mother at this juncture." Considering the factors that weighed in favor of Parents, the Court found that DCS failed to "eliminate any serious or substantial doubt in this Court that the termination of either Parent's parental rights [was] in the child's best interests."

The Court of Appeals reversed the termination of both mother and father's parental rights because the record lacked clear and convincing evidence that termination was in the child's best interest.

***Wesley v. Campbell*, 779 F.3d 421 (6th Cir. 2015).**

This case involves an appeal from the dismissal of a claim for false arrest in violation of the First and Fourth Amendments. Plaintiff is a former school counselor and Defendant is the arresting police officer.

On February 5, 2009, Plaintiff found a seven-year-old male student (J.S.) attempting to harm himself in a school hallway. Plaintiff took the boy into his office where two other boys remained from an earlier counseling session. When Plaintiff left to contact J.S.'s mother, the three students stayed with a school secretary, who later testified that Plaintiff was never alone with J.S. on the date in question. On Plaintiff's recommendation, J.S.'s mother picked up J.S. and drove him

to a local mental health center. After arriving at the center, J.S.'s mother contacted Kentucky CPS. She reported that during their car ride together, J.S. told her that Plaintiff had sexually abused him. When the investigating state social worker interviewed J.S., he told her that Plaintiff had inappropriately touched him. Defendant is a police detective who was contacted by the social worker following the referral. Six days after the initial allegations, Defendant and the investigating social worker attended J.S.'s forensic interview. At that time, J.S. added that the incident on February 5 included sexual penetration, that the abuse had been occurring for more than a year, and that Plaintiff had committed similar acts against two other students. The court noted that both the social worker and Defendant

failed to verify J.S.'s allegations by questioning potential witnesses at the school (as demonstrated by the secretary's testimony). Moreover, seven social workers identified and interviewed 35 children who had met with Plaintiff more than once. All 35 children denied any wrongdoing by Plaintiff. A medical exam on February 18 indicated no health concerns for J.S. After being placed on administrative leave for a short time, Plaintiff's employment with the school was terminated.

Although neither Defendant nor the investigating social worker investigated J.S.'s allegations further, Kentucky CPS sent Plaintiff a "substantiated investigation notification letter." Defendant learned that Plaintiff had appealed the agency finding in April, and on April 27 she sought and obtained a warrant for Plaintiff's arrest. However, J.S. and his mother refused to cooperate with the prosecution's investigation. Ultimately, the grand jury declined to indict Plaintiff and the state's attorney determined that the case could not be tried. On February 15, 2010, the substantiation was reversed at an administrative hearing.

Plaintiff's civil rights claims against Defendant, the social worker, and others included: retaliatory arrest, unlawful arrest, outrage, and negligent investigation. The trial court granted Defendant's motion to dismiss on the outrage, false arrest, and negligent investigation claims. It determined there was probable cause for the arrest and that Defendant had qualified immunity. Because Defendant did not seek qualified immunity on the retaliatory arrest

claim, it was allowed to proceed. However, when Defendant moved for summary judgment on the claim, then asserting qualified immunity, the trial court granted the motion.

On appeal, the Sixth Circuit noted that the central inquiry was whether J.S.'s allegations created probable cause for Plaintiff's arrest. If so, Defendant would have qualified immunity. If not, qualified immunity was inappropriate and both trial court decisions were in error.

Regarding the motion to dismiss, the district court had dismissed Plaintiff's false arrest claims on qualified immunity grounds. When reviewing such decisions, the Sixth Circuit applies a "two-tiered inquiry." The first step is to determine if the alleged facts make out a violation of a constitutional right. If the plaintiff shows such a violation, "the second step is to ask if the right at issue was clearly established when the event occurred such that a reasonable officer would have known that his conduct violated it." *Martin v. City of Broadview Heights*, 712 F.3d 951, 947 (6th Cir. 2013). In the context of an officer's application for an arrest warrant, the officer violates the law if he or she makes material omissions that are "deliberate or show reckless disregard for the truth." *Gregory v. City of Louisville*, 444 F.3d 725, 758 (6th Cir. 2006). In contrast, an officer has probable cause when the officer has knowledge and reasonably trustworthy information that would cause a prudent person to believe that the person to be arrested committed an offense. *See, Beck v. State of Ohio*, 379 U.S. 89, 91 (1964). Here, the Sixth Circuit determined that J.S.'s

uncorroborated allegations did not create probable cause. Probable cause does not exist when an officer has an apparent reason to believe that the witness was incorrect or dishonest.

The Sixth Circuit expressed concern about probable cause being based solely upon a child's uncorroborated, allegations and noted that no federal appellate court has ever found probable cause without some evidence corroborating the child's story. The Court found J.S.'s allegations to be facially implausible. It would have been difficult for multiple instances of sexual misconduct to occur in Plaintiff's office, considering that his door was always open and that several staff members could look directly into the office. Additionally, J.S.'s story was inconsistent, his medical exam showed no evidence of anal injury, and he had a history of psychological problems. The Court determined that Plaintiff plausibly alleged that Defendant arrested him without probable cause. Defendant thus forfeited qualified immunity, because the application for an arrest warrant "contained omissions that were deliberate or showed reckless disregard for the truth." Defendant's omissions indicated deliberateness or reckless disregard for the truth because any reasonable officer would know that a judge wants to hear such information.

Regarding the grant of summary judgment on the retaliatory arrest claim, the Court

found that Defendant's allegations were substantiated by the record. A plaintiff must make three showings to establish a claim for retaliatory arrest: "(1) plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two—that is the adverse action was motivated in part by the plaintiff's protected conduct." *Kennedy v. City of Villa Hills, Ky.*, 635 F.3d 210, 217 (6th Cir. 2011). The Court did not determine whether a lack of probable cause is an element in wrongful-arrest claims, but noted that the "existence of probable cause is clearly relevant to an officer's qualified immunity on a claim for retaliatory arrest." Here, Defendant should have been aware that at least some of J.S.'s allegations were likely untrue. Once 35 children stated that Plaintiff had never harmed them, Defendant should have questioned the veracity of J.S.'s other claims. Summary judgment on the retaliatory arrest claim was not appropriate because there were triable issues of fact regarding the materiality of facts that Defendant omitted from the warrant application, and whether such omissions constituted deliberateness or reckless disregard for the truth. The district court's judgment on the dismissal of the false arrest claim, and the grant of summary judgment on the retaliatory arrest claim was reversed. The case was remanded.

***In re: Kailee M.G.*, 2015 WL 1453427 (Tenn. Ct. App. At Knoxville, February 23, 2015)
from Sullivan County of Sullivan County**

This case involves issues of *res judicata*, reasonable efforts, and a finding of clear and convincing evidence in the decision to terminate parental rights. In March 2012, the Juvenile Court of Sullivan County found Kailee M.G. dependent and neglected and severely abused. Kailee suffered bilateral skull fractures, acute subdural hemorrhage, and hemorrhages to all four levels of her eye. In May 2012, the Department filed a petition seeking to terminate the parental rights of both Mother and Father. In the April 2013 hearing, the court dismissed the petition against Mother and ordered supervised visitations reinstated. In November 2013, the Department again filed a petition to terminate Mother's parental rights for substantial noncompliance pursuant to Tenn. Code Ann. §36-1-113(g)(3) and for persistent conditions pursuant Tenn. Code Ann. §36-1-113(g)(2).

At trial in June 2014, the Department presented evidence regarding Mother's failed drug screens. A diagnostics expert testified that during 2013 and 2014 he administered several drug screens to Mother. Between March 2013 and February 2014, Mother tested positive for cocaine on each test. Mother testified that she relapsed and used cocaine at a friend's house, and knew she had "messed up a couple of times".

The clinical director who conducted the parenting assessment on Mother also testified. The Director testified as to Kailee's connection with Foster Parents, and

the trauma and PTSD factor of removing Kailee from Foster Parents' care. She expressed concern that Mother continued to fail drug screens three years after losing custody and that Kailee should remain with Foster Parents. Foster Mother testified that Kailee had disabilities which required occupational therapy, speech therapy; and that Kailee also had vision problems which required early intervention services, and had seizures, which required medication. Foster Mother testified as to the strong bond she and the other children had with Kailee.

The trial court terminated Mother's parental rights on July 25, 2014. On appeal, Mother raised four issues: 1) whether the court erred in denying Mother's motion to dismiss, 2) whether the court erred in finding DCS exercised reasonable efforts, 3) whether the court erred that grounds had been proven by clear and convincing evidence, and 4) whether the court erred in finding best interest.

As to the first issue, the Juvenile Court had denied Mother's motion to dismiss in which she asserted the 2013 petition made should be barred by *res judicata* or collateral estoppel. Mother argued the 2013 petition was based on the previously dismissed 2012 allegations of severe abuse. The Court of Appeals held the 2013 petition was based on grounds of substantial noncompliance with the parenting plan and persistent conditions and that neither of these issues were a basis of the 2012 petition. Further, the Court held

the drug screen evidence presented in the 2014 trial was administered to Mother well after the 2012 petition was dismissed.

Additionally, the court noted that the idea “that a petition to terminate parental rights once defeated operates as a bar to all future such petitions to terminate parental rights would be ludicrous and we expressly decline to so hold.” The Court, did not address the issue as to whether a petition could be filed as to the same ground as a previously dismissed petition.

***In re Brooklyn W.*, 2015 WL1383755 (Tenn. Ct. App. at Memphis, March 24, 2015) from the Shelby County Chancery Court.**

This is a termination of parental rights case. Mother and Father had one child together in 2007. They never married, and separated in 2009. Mother took custody of the child. At that time, the parties did not seek court intervention. Mother allowed Father to visit the child until June 2010, when the Mother grew concerned for the child’s safety. From June 2010 until the filing of the underlying petition in this case, Father had no visitation and paid no support.

On March 26, 2012, Mother and Father appeared in the Tipton County Chancery Court. At this hearing, the Court entered an agreed order requiring Father to place the child on his health insurance policy. On July 10, 2012, Father filed a Petition to Establish Parentage and Visitation with the child in the Tipton County Juvenile Court.

That following month, Mother married Petitioner/Appellant Stepfather on August 26, 2012. The Petitioners filed a Petition to

The Court then considered whether the Trial Court erred in determining the Department exercised reasonable efforts. Citing *Kaliyah S.*, the court noted that proof of reasonable efforts is not a precondition to termination. In any event, in this case the Department, prior to being relieved of doing so, had exercised reasonable efforts. With these issues resolved, the Court affirmed the termination on both grounds and best interests.

Terminate Father’s Parental Rights the next day on the grounds of abandonment by willful failure to visit and/or willful failure to support. Father was served and appeared before the trial court. He was informed that he had thirty days to obtain an attorney. He failed to respond to the petition and a default judgment was entered against him. Father filed an answer on December 31, 2012, and a voluntary acknowledgment of paternity on January 7, 2013. The trial court nevertheless entered an order granting Petitioners’ request for termination and adoption on January 7, 2013.

On January 11, 2013, Father, represented by different counsel, filed a motion to set aside the final decree. Father argued that the delay in his response was due to confusion with his previous counsel. He also submitted an affidavit denying that he had willfully failed to visit and/or support the trial. The trial court granted his request to set aside the

termination and adoption decree on September 10, 2013.

The trial court heard the termination petition on February 27, 2014. Petitioners and their witnesses testified that Father made no attempt to visit or support the child. They also testified that the child does not know Father and is in a stable home. Prior to trial, Father filed a Statement of Admissions in the trial court, in which he admitted to his lack of visitation, his criminal record, and the fact that he was aware of Mother's address.

Mother testified that she left Father because of his violence and alcoholism. She also testified that Father had regular visitation with the child after their separation. Mother regularly drove the child from Shelby County to the paternal grandmother's home where Father visited. Once Mother grew concerned about the lack of stability in this home, she stopped taking the child. Mother testified that after this, Father never requested visitation or inquired about the child until the filing of his visitation petition in July 2012. Mother testified that Father paid no monetary support after their separation. Since at least June 2010, the child received no gifts or in-kind support. She testified that Father never offered any support. Mother testified that she obtained an order of protection against Father in January 2011 that was dissolved three months later.

At the time of trial, Father was married with two children and had been employed since fall 2010. Father admitted the police had been to his current home for domestic violence issues. He further admitted that

after his separation with Mother, he continued to call her drunk and angry. He admitted to having no visitation with the child for the four months preceding the Petition's filing. He blamed Mother for this, but admitted that he did not contact Mother to arrange visitation after June 2010. His Statement of Admissions concluded that he "has not made any attempts to visit with the child since early 2010."

Father argued that Mother's refusal to allow the child to visit with paternal grandmother was due to his new romantic relationship but did not deny Mother's allegations regarding instability. He admitted that Mother did nothing to prevent him from visiting the child. He further testified that although he earned an annual salary, he never provided support other than one payment in 2010. Father argued that he believed that visitation and support go hand in hand, and he would not send support without assurance that he could see the child. Father admitted that although he was ordered in March 2012 to provide health insurance for the child, the child was not placed on Father's insurance until November 1, 2012, and no health insurance card was mailed to Mother until January 2013.

The trial court found that Father's July 10, 2012 visitation petition evinced his intent to establish a relationship with the child. It held that by filing the visitation petition, Father demonstrated interest for providing support and visitation within the four-month period before the termination petition was filed on August 27, 2012. It further found that Mother frustrated Father's attempts to visit the child. The trial court thus concluded that

the Petitioners failed to establish grounds for termination. Petitioners appealed. While the appeal was pending, the trial court entered an order dismissing Father's request for visitation.

Petitioners presented three issues on appeal:

1) Whether the court erred in finding that Petitioners failed to prove that Father abandoned the child by failing to visit and pay support; 2) Whether the court erred in finding that Petitioners failed to prove termination was in the child's best interests; and 3) Whether the court erred in setting aside the final decree of adoption following a default judgment against Father.

In respect to the third issue, Father had attached a sworn affidavit stating that his delay in responding was due to confusion as to where he could receive legal assistance. He also alleged that he received no notice of the January 7, 2014, hearing, and that he had a meritorious defense against the allegations in the termination petition. The trial court set aside the default judgment.

The Court noted that the trial court was the only court that could assess Father's credibility, and that Father submitted a defense that had the potential to succeed at trial. As such, the Court declined to conclude that the trial court abused its discretion in setting aside the final decree of adoption.

In respect to the termination of Father's parental rights, the Court first examined the contention that Father willfully failed to support the child. There is no dispute that Father did not provide support although he was financially capable. However, Father

argued that his failure was not willful because he attempted to pay the child's insurance and because in the Tipton County Juvenile Court, the parties agreed that Father would not pay monetary child support to Mother.

The Court rejected Father's argument. He did not comply with the order to provide medical coverage during the relevant time period. Documents showed that there was a substantial delay in his providing insurance. The Court held that his belated effort represented token support at best. Moreover, Father did not provide monetary support for the child. Father asserted that the court only ordered that he help with insurance; however, it is a parent's duty to provide support even in the absence of any order. A custodial parent's failure to seek support from the non-custodial parent is insufficient to excuse the non-custodial parent's failure to support. Finally, Father's choice to withhold support from the child unless and until he was allowed to visit the child constituted willful conduct.

The Court next considered whether the ground of abandonment by failure to visit was established. Father asserted that although he was not exercising visitation, he was pursuing judicial intervention to facilitate his visitation. He also claimed that Mother's order of protection was thwarting his attempt. The Court held that if Father was aware of the order of protection, he must also be aware of its dissolution, and rejected this argument.

The Court examined whether Father's visitation petition proved that he did not willfully abandon the child. The Court found

that nothing in the record indicates that Father had tried to visit at any time before he filed the visitation petition. There was no excuse for Father's delay in seeking visitation. The Court held that Father's visitation petition was a token effort, and that the trial court erred in finding that

***State v. Crank* WL603158 (Tenn. Ct. App. at Knoxville, February 13, 2015) from the Loudon County Circuit Court.**

This is an appeal from a criminal conviction. Defendant Crank was indicted and subsequently convicted for child neglect based upon failure to obtain medical treatment.

In 2001, Defendant and her fifteen-year-old daughter began attending religious services conducted by Ariel Ben Sherman of the Universal Life Church. In early 2002, Defendant observed a "problem" with her daughter's shoulder and visited a local chiropractor. On February 18, 2002, the chiropractor conducted an examination and instructed Defendant to take the child to an emergency room. The Defendant, accompanied by Ariel Sherman, indicated she would do so.

On May 6, 2002, the child presented at a walk-in clinic where a nurse practitioner also instructed Defendant to take the child to an emergency room. When the nurse practitioner determined that the child never arrived at the emergency room, law enforcement was notified. The responding officer, with DCS assistance, removed the child from Defendant's custody and took her to East Tennessee Children's Hospital in Knoxville where she was diagnosed with

Petitioners failed to prove that Father willfully failed to visit.

Because the trial court did not reach the issue of whether termination was in the child's best interest, the Court remanded the case to the trial court to make this determination.

Ewing's Sarcoma. After remaining hospitalized for some time, the child was released under hospice care. She succumbed to her illness in September of 2002.

In April of 2003, both the Defendant and Ariel Sherman were indicted for child neglect based upon failure to obtain adequate medical treatment. Defendant moved to dismiss the charge, challenging the constitutionality of Tennessee's child abuse and neglect statute as informed by the "spiritual treatment" exemption provided in a 2005 amendment to the state code. Tenn. Code Ann. § 39-15-402(c). Under the exemption, child abuse and neglect do not occur when a child is "provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment." Additionally, Defendant sought relief under the state's Preservation of Religious Freedom Act, which prohibits the state from burdening the free exercise of religion unless the state shows the burden is "essential to a compelling governmental interest" and constitutes "the least restrictive

means of furthering that compelling governmental interest.” Tenn. Code Ann. 4-1-407(c)(1)-(2).

The trial court rejected the Defendant’s constitutional claims and denied her motion to dismiss. The parties then consented to a bench trial. At trial, the chiropractor, nurse practitioner, and diagnosing physician all testified by affidavit. The physician indicated earlier treatment, while unlikely to have been curative, would have “positively impacted” the child’s life and ability to deal with her condition and symptoms. After all proof was submitted, Defendant requested an acquittal based upon the spiritual treatment exemption. Declining to address the exemption, the trial court found Defendant guilty of child neglect. The Court of Criminal Appeals affirmed the conviction and sentence (11 months and 29 days to be served on unsupervised probation).

Defendant presented three issues in her appeal before the Tennessee Supreme Court. First, Defendant argued that the spiritual treatment exemption renders the child abuse and neglect statute unconstitutionally vague. The vagueness doctrine is meant to ensure that statutes give citizens fair warning as to what conduct is forbidden, the commission of which could result in criminal liability. The Court first acknowledged that the vagueness issue must be addressed because the Defendant would be entitled to a reversal if the statute did indeed fail to give the “requisite fair warning.” Here, Defendant made a facial challenge to the exemption. To be successful on such a challenge, defendants must establish that no set of

circumstances exist under which the provision would be valid. *See Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2.d 520, 525 (Tenn. 1993). The Court disagreed with the defendant’s assertion that terms used in the exemption, such as “treatment,” “prayer alone,” and “tenets or practices” are unclear to the point that “neither individuals nor law enforcement officers can ascertain when the statute applies.” The Court provided the plain meaning of several terms by reference to Webster’s Dictionary. Ultimately, the exemption’s language was sufficiently clear when “construed according to the fair import of its terms.” Additionally, the Court stated that “because the exemption is effectively limited to members of religious groups that closely resemble the Christian Science Church [which the Court notes is an established institution with doctrines or customs that authorize healers to perform treatment via prayer in lieu of medical care] the terms at issue are not so vague that the scope of the exemption cannot be ascertained.” Therefore, the Court found that the spiritual treatment exemption was not unconstitutionally vague.

The second issue presented on appeal was whether the spiritual treatment exemption violated the Establishment Clause or the Defendant’s right to equal protection. Defendant argued that the exemption improperly favors certain religious groups (Christian Scientists) while denying protection for the practices of other groups. The Court began its analysis by referring to *State v. Murray*, where the Court held that it will not “pass on the constitutionality of a statute, or any part of one, unless it is

absolutely necessary for the determination of the case and of the present rights of the parties to the litigation.” *State v. Murray*, 480 S.W.2d 355, 357 (Tenn. 1972). If the spiritual treatment exemption were unconstitutional, the Court stated that the appropriate remedy would be to strike or “elide” the exemption completely. Under such an approach, the remainder of the child abuse statutes—which prohibit abuse and neglect—would remain in effect. Here, the invalidity of the spiritual treatment exemption would not preclude the enforcement of the remaining portions of the child abuse and neglect statute. As such, the Defendant would not be entitled to relief even if the Court were to find the exemption to be a violation of the Establishment Clause or Equal Protection Clause. Consequently, the Court affirmed the Defendant’s convictions while declining to rule on her constitutional claims.

Finally, the court examined whether Defendant was entitled to a hearing to assert a defense under the Preservation of Religious Freedom Act. The Act provides that “a person whose religious exercise has been burdened by government in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding.” Tenn. Code Ann. § 4-1-407(e). Here, the Court determined that the Act, which took effect in 2009, did not apply retroactively. The Court identified two circumstances in which it is appropriate to apply a statute retroactively: 1) when there is a clear legislative intent mandating retroactive application, and 2) when the statute is remedial or procedural in nature such that it “does not affect the vested rights or liabilities of the parties.” Finding that neither of these circumstances was present here, the Court of Criminal Appeals’ judgment was affirmed.

***In re: Baby et al.*, 447 S.W.3d 807 (2014) Supreme Court of Tennessee at Nashville from the Juvenile Court of Davidson County**

This Tennessee Supreme Court case involves parties who entered into a surrogacy contract in Tennessee. The question is whether or not Tennessee public policy allows for the enforcement of a ‘traditional’ surrogacy contract.

Intended Parents, citizens of Italy, and Surrogate and her husband, U.S. citizens, entered into a contract in July 2010. The contract set forth that Surrogate would be inseminated with the sperm of Intended Father. Once the child was born, Surrogate would relinquish the child to Intended

Parents, who were to be the child’s legal parents.

Prior to the birth of the child, Surrogate, her husband, and Intended Parents presented to the Magistrate a *Petition to Declare the Parentage, to Ratify Surrogacy Agreement, and to Direct Issuance of Birth Certificate*. An order signed by all parties in December 2011 “forever terminated” the “rights and responsibilities that the [Surrogate and her husband] might theoretically claim with regard to the child, if any,” declared the child to be “the lawful child” of the Intended Father, and entitle Intended Parents to full

legal and physical custody of the child once born.

In 2012, approximately one week after the child was born, Surrogate filed a motion seeking an injunction to amend the 2011 order regarding relinquishment of the child to Intended Parents. Surrogate asserted that since Intended Parents were not married the child did not meet the requirements of a “surrogate birth” in Tennessee. The Magistrate denied the injunction and ordered Surrogate to give physical custody to Intended Father.

Three weeks later, Surrogate again asked the Magistrate to grant her relief from the surrogacy contract, citing the same ground. This time Surrogate claimed that the surrogacy contract was unenforceable because Intended Parents were not married. The Magistrate denied this second request and Surrogate appealed to the Juvenile Court, which affirmed. Surrogate then appealed to the Court of Appeals, which also affirmed.

The Tennessee Supreme Court accepted this appeal to resolve a question of public policy pertaining to the enforcement of surrogacy contracts. Surrogate contended in her appeal that the Juvenile Court lacked jurisdiction over the matter because Intended Parents were not married at the time of the contract or during the first request for relief and therefore failed to comply with the surrogacy statute.

The Court elaborated the restrictions placed upon a ‘traditional’ surrogacy versus a

‘gestational’ surrogacy as it relates to the parental rights of the biological mother and the termination of any parental rights prior to the birth of a child. Tennessee’s adoption statute differentiates between a ‘traditional’ surrogate birth and a ‘gestational’ surrogate birth for the purpose of parental rights. In this instance, Surrogate provided the egg, which makes her both the biological mother and gestational mother. Since the contract stipulated the child was to undergo DNA tests to confirm the sperm used was that of Intended Father (a.k.a. Biological Father) the Juvenile Court had jurisdiction over this matter for the purpose of determining parentage, and therefore, for purposes of determining custody.

Ultimately, the Court upheld all rulings with the exception of the termination of Surrogate’s parental rights. Since current policy does not allow for involuntary termination, consent for adoption, or surrender of a child prior to birth, Surrogate’s waiver of parental rights in the surrogacy contract was void. A court could terminate Surrogate/Biological Mother’s parental rights in only three ways: 1) statutory ground for termination/best interest of the child, 2) Mother’s consent to adoption, or 3) the mother ‘surrendering’ her rights. The Court held that no private agreement, such as a surrogacy contract, supersedes the court’s determination of custody and remanded the case for determination of visitation and child support until such time as a ruling regarding termination of Surrogate/Biological Mother’s rights was issued.

The Court concluded that the “enforcement of a ‘traditional’ surrogacy contract must occur within the confines of the statutes governing who qualifies as a legal parent and how parental rights may be terminated”. The Court rejected Intended Parent’s argument that the surrogacy statute provided an independent procedure for termination of parental rights and held that public policy does not preclude the enforcement of traditional surrogacy contracts, but places restrictions with regards to all aspects of the contract. Parties to these contract should be

mindful that 1) compensation is not contingent on the surrender of the child, 2) the contract will not override any judicial determination of best interest for the child, 3) the contract will not attempt to circumvent the statutes governing a person’s status a ‘legal’ parent, and 4) that termination of parental rights in an involuntary proceeding may not occur absent a finding the parent is unfit or poses harm to the child if the rights are not terminated.

***In re Amadi A. et al.*, WL 5548824 (Tenn. Ct. App. at Jackson, April 24, 2015) from the Madison County Juvenile.**

This case involves a dispute over the legal maternity of twin children born into a surrogacy agreement. Mr. and Mrs. A entered into a surrogacy contract with C.B. and her husband T.B. C.B. carried donated eggs fertilized with Mr. A’s sperm and gave birth to twin boys on April 2, 2014.

That same day, a general sessions judge sitting by interchange entered an ex parte order granting the relief sought in the joint petition. Mr. and Mrs. A were declared the sole legal parents of the children, and the Department of Health was ordered to issue original birth certificates reflecting this.

On April 3, 2014, Mr. and Mrs. A filed a joint petition with C.B. and T.B. in the Juvenile Court for Madison County. The petition was titled “Petition to Establish Parentage and Custody, to Ratify Gestational Carrier Agreement and for Declaratory Judgment.” The petition asked the court to declare Mr. and Mrs. A the sole legal parents, to declare that C.B. and T.B. were not the children’s parents, and to enter an order requiring the Tennessee Department of Health to issue birth certificates for the children listing Mr. and Mrs. A as the parents.

On May 6, 2014, DOH filed a motion to intervene and alter or amend or set aside “pertinent portions” of the court’s order – specifically to set aside the finding that Mrs. A was the legal mother of the children and entitled to have her name listed on the original birth certificates. Since Mrs. A had no biological or gestational relationship to the children, DOH argued that listing her name on the certificate was contrary to state law (specifically TCA 68-3-102(10), which refers to a product of human conception being extracted from its mother). DOH sought to list C.B. as the mother on the birth certificate. DOH noted that it would list non-

biological and non-gestational intended parents on certificates if it received the necessary paperwork following an adoption proceeding.

The juvenile court judge granted an DOH's motion. The court found that listing Mrs. A on the birth certificates would violate the Vital Records Act. Accordingly, the court held that the woman who gave birth must be listed on the birth certificates. It also found that a nonbiological parent must adopt in order to obtain parental rights pursuant to TCA 36-1-192(48). The court vacated those portions of the previous order, and the joint petitioners filed a notice of appeal.

The joint petitioners presented the following issues on appeal: 1) Whether the court erred in vacating portions of its prior order granting Mrs. A legal rights as a parent; 2) Whether the terms of the gestational contract agreement controlled; 3) Whether Mrs. A had the same equal protection rights to be recognized as the legal parent as her husband would have if he had donated sperm; and 4) Whether Mr. and Mrs. A had a constitutionally protected liberty interest in their family life such that denying them legal recognition of their relationship with the children violates their due process rights.

The Court did not consider the argument regarding equal protection and due process since they were not raised before trial court. It next considered whose name should be on the birth certificate. In a previous similar case, *In re Adoption of A.F.C.*, the court of appeals determined that the mother to be entered on the certificate of live birth

required by TCA 68-3-301 is the same as that used in preparing the standard certificate, i.e., the woman who delivers the child. This Court agreed with this ruling, and that of the juvenile court, and held that the surrogate mother, C.B., should be listed on the birth certificates.

The Court next considered whether C.B. should have been declared legal mother. The juvenile court ruled that Mrs. A, as a nonbiological parent, could only obtain parental rights through an adoption. The Court noted that the Tennessee Supreme Court has relied on four factors to examine this issue: genetics, gestation, intent to take on parental responsibilities, and the nature of the controversy. The Court found a declaratory judgment inappropriate under the facts of this case due to the absence of a justiciable controversy. The parties are not being compelled to do anything based on determination regarding who is the "legal mother"; DOH may have a difference of opinion but does not have the authority to declare who qualifies as the legal mother. Since this case did not present an actual, ongoing controversy regarding legal maternity, the Court vacated the juvenile court's finding regarding legal maternity of the children.

The Court concluded by urging the Tennessee General Assembly to give Tennessee's courts and citizens increased guidance in the area of surrogacy law. The decision of the juvenile court was affirmed in part, vacated in part, and remanded for further proceedings.

***Grady v. North Carolina*, 135 S. Ct. 1368 (2015).**

This is a Supreme Court Fourth Amendment case. Petitioner Grady was convicted in North Carolina trial courts of a second degree sexual offense and of taking indecent liberties with a child in 1997 and 2006 respectively. After serving his 2006 sentence, Grady appeared in County Superior Court to determine whether he should be subjected to satellite-based monitoring (SBM) as a recidivist sex offender. SBM consists of wearing tracking devices at all times. Grady argued that SBM would violate his Fourth Amendment rights. The trial court rejected this argument and ordered Grady to enroll in the program for the rest of his life.

Grady renewed his Fourth Amendment challenge on appeal. He relied on a Supreme Court decision in *United States v. Jones* (2012). In that case, the Court held that police had engaged in a Fourth Amendment search when they installed and monitored a GPS on a suspect's car.

The North Carolina Court of Appeals rejected his argument based on a prior decision from (coincidentally) *State v. Jones* (2013). In that decision, the court had held: "The context presented in the instant case—which involves a civil SBM proceeding—is readily distinguishable from that presented in [*United States v.*] *Jones*, where the Court considered the propriety of a search in the context of a motion to suppress evidence. We conclude, therefore, that the specific holding in *Jones* does not control in the case *sub judice*." The court in Grady's case held itself bound by this reasoning. The North Carolina Supreme Court dismissed Grady's

appeal and denied his petition for discretionary review.

Grady next came to the Supreme Court. The Court noted that the only explanation provided for rejecting Grady's challenge is the passage from *State v. Jones*. The Court stated that the only theory it discerned in that passage is that the State's system of nonconsensual SBM does not entail a Fourth Amendment search. The Court held that this is inconsistent with its precedents.

The Court noted that in its *United States v. Jones* decision, it stressed the importance of the fact that the Government had "physically occupied private property for the purpose of obtaining information." The Court reaffirmed this principle in *Florida v. Jardines* (2013), where it held that having a drug-sniffing dog nose around a suspect's front porch was a search because police had "gathered...information by physically entering and occupying to engage in conduct not...permitted by the homeowner." In respect to these decisions, it follows that a State also conducts a search when it attaches a device to a person's body without consent to track the individual's movements.

In concluding otherwise, the Court discerned that the North Carolina Court of Appeals placed decisive weight on the fact that the State's monitoring program was civil in nature. However, the Court noted that the Fourth Amendment's protection extends beyond criminal investigations, and the government's purpose in collecting information does not control whether the method of collection constitutes a search.

In its brief in opposition to certiorari, the State argued that the Court cannot be sure its program for SBM of sex offenders collects any information. However, the text of the statute states that SBM uses a system that provides both tracking of the geographic location of the subject and reporting of the subject's violations of schedule or location requirements. The program was clearly designed to obtain information. Since it obtains this information by intruding on a subject's body, it constituted a Fourth Amendment search.

This conclusion did not decide the ultimate question of the program's constitutionality. The Fourth Amendment prohibits only *unreasonable* searches. The North Carolina courts did not examine whether the State's monitoring program is reasonable when viewed as a search. The Court granted the petition for certiorari, vacated the judgment of the Supreme Court of North Carolina, and remanded the case for further proceedings consistent with this opinion.

In re Ayris R., 2015 WL1868642 (Tenn. Ct. App. at Knoxville, April 23, 2015) from the Washington County Juvenile Court.

This is a DCS termination of parental rights appeal brought by the putative father. The child was born to Mother and Putative Father in September 2013. Putative Father was incarcerated at the time. The Child had been exposed in utero to Subutex, THC, and cocaine. Child was diagnosed with Pierre Robin Syndrome. DCS took custody in October 2013, and she was adjudicated as severely abused.

The Parents were not married at the time of the child's birth, and Putative Father's name was not listed on the birth certificate. Mother identified Putative Father as the biological father. He took a DNA test but the results were not disclosed to DCS. He took no further steps to establish paternity. When he was released from jail in March 2014, DCS arranged weekly visitation between him and the child.

In June 2014 DCS filed a petition to terminate Putative Father's parental rights

pursuant to 36-1-117(c) and 36-1-113(g)(9) because he had failed to establish paternity. Putative Father was present but did not testify at the hearing. DCS case manager Katie Wilhoit established that the child was in a two-parent home with a stay-at-home foster father with whom the child had bonded. Ms. Wilhoit testified that Putative Father had neither legitimated the child nor filed a petition for paternity. She argued that placing the child with Putative Father would pose a substantial risk of harm.

Ms. Wilhoit testified that Putative Father had not remitted child support despite having access to money. He only visited the child on six occasions from March 19, 2014, until the hearing on September 29, 2014, despite her willingness to arrange weekly visits. Putative Father's parental rights to the child's half-sister had been terminated in May 2014. The trial court held terminated rights.

Putative Father appealed, challenging the best interest finding but not the trial court's ruling concerning the statutory ground for termination. The Court was satisfied that the trial court's ruling as to the statutory ground for termination. The Court held that a number of best interest factors weighed against Putative Father since he failed to take advantage of opportunities for visitation and never bothered to establish his paternity. The Court affirmed the decision of the trial court.

GETTING THE RIGHT SERVICES TO THE RIGHT PEOPLE AT THE RIGHT TIME

Keri Virgo, Tennessee Department of Mental Health and Substance Abuse Services

Dr. Altha Stewart, Shelby County Government

Judge Steve Hornsby (Ret.), Strategic Consulting for Organizations & Government

Dr. Jeff Feix, Tennessee Department of Mental Health and Substance Abuse Services

Closing the Cracks:

The crack that opens up right outside the Courthouse door

Close the crack with:

1. *Early Screening/Assessments*
2. *Collaboration*
3. *Judicial Leadership*

Closing the Cracks:

The crack that opens up right outside the Courthouse door

1. Getting More Services to kids and families begins with **Early Identification:**
 - Evidence-based *Screening/Assessments*
 - *Early* in the Court process

Collaboration is Key

1. Key People:

- Court Staff
- Service Providers
- State and Local Agencies
- Others – PD, DA, schools, nonprofits/faith-based organizations

2. Regular Meetings

3. Staying Solution-focused

JUDICIAL LEADERSHIP

is essential

There is **NO SUBSTITUTE** for
YOU

TENNESSEE INTEGRATED COURT SCREENING AND REFERRAL PROJECT

Identifying and Addressing the Mental Health and Substance Abuse needs of Youth in Juvenile Court

CHILDREN IN NEED

- Over 44,000 children were referred to juvenile courts as delinquent in CY 2008 and over 20,000 referred as unruly
- 65%-70% of youth in juvenile justice system have a diagnosable mental illness
- Juvenile court-ordered mental health evaluations increased 37% between 2004 and 2008
- Suicide is the third leading cause of death for youth age 15-24 in Tennessee

Youth Service Officers
Trained to Administer
CANS

All children referred as
delinquent or unruly in
10 pilot counties
screened with **CANS**

Children with MH/SA
needs referred for
services by DCS Court
Liaison

In 5 counties, Family
Service Providers help
child & family navigate
service provider system

GOALS

- Reduce Recidivism
- Increase diversion
- Improve MH/SA service availability & accessibility

CANS

Child and Adolescent Needs and Strengths

- 33 face-valid items
- Indicates presence and intensity of need
- Easily translated into referral for services
- Web-based administration and scoring streamlines data collection



Risk Behavior Anchor Examples

Check	SUICIDE RISK <i>Please rate the highest level from the past 30 days</i>
0	No evidence
1	History but no recent ideation or gesture.
2	Recent ideation or gesture but not in past 24 hours.
3	Current ideation and intent OR command hallucinations that involve self-harm.



TENNESSEE INTEGRATED COURT SCREENING AND REFERRAL PROJECT

Addressing the Mental Health and Substance Abuse Needs of Youth in Juvenile Court

Now Accepting Applications from New Courts

- Federally-funded services are available for additional courts to participate
- Participating courts will receive free:
 - CANS training
 - Secure online data collection
 - Ongoing technical support from the Vanderbilt COE
 - Data analysis and feedback

Project Implementation

- Project Task Force conference call with court staff on orientation and how to start
- Toolkit for courts for Kick Off Day
- Large stakeholder meeting followed by JJ-CANS training
- Ongoing technical assistance
- Will provide data to courts on their youth

For More Information

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Breakout Sessions

1. Checklist of Action Strategies
2. Regional Groups
3. Begin Constructive Dialogue on
Implementing Early Screening
4. Stay *Solution-focused*
5. Plan to meet again *SOON*