



Trial Practice in Child Welfare

Trial Preparation and Evidence

Objectives

- Build a strong trial strategy grounded in the Tennessee Rules of Evidence.
- Review:
 - essential steps for pretrial planning in juvenile court;
 - common evidentiary challenges and how to address them;
 - best practices for preparing witnesses, including children; and
 - procedures related to child witnesses.

Evidence Essentials Refresher



Set the Table

Court relies only on the record

- Build a clean, clear record



Rules

TN Rules of Evidence

- Relaxed Rules



Burden

Preliminary: probable cause

Adjudication: clear & convincing

Disposition: preponderance



Type of Hearing	Rules of Juvenile Procedure	Rules of Civil Procedure	Rules of Evidence	Standard of Proof/ Notes
Preliminary Hearing (Protective Custody/ Ex Parte Removal)	Yes – TRJPP govern (esp. TRJPP 27–28)	No	Relaxed – reliable hearsay often admitted (e.g., social worker testimony or out-of-court statements)	Standard of proof = probable cause. Focus on immediate safety; formal evidence rules not strictly applied.
Adjudicatory Hearing	Yes – TRJPP apply generally	No	Yes – TRE apply	Standard of proof = clear and convincing evidence. Child presumed competent to testify.
Dispositional Hearing (after adjudication)	Yes – TRJPP apply	No	Relaxed – court may consider reports, hearsay, and other reliable info	Standard of proof = preponderance of evidence. Court’s role is to issue orders in the child’s best interest.
Review Hearings (permanency, progress, periodic)	Yes – TRJPP apply	No	Relaxed – hearsay and reports typically admissible	Hearings are not an adjudication of facts but progress reviews.
Motions Practice (pre-trial or post-disposition)	TRJPP govern motion procedure	TRCP may apply if TRJPP silent (TRJPP 1(b))	If evidentiary hearing, TN Rules of Evidence apply	Ex: Motion to compel discovery follows civil rules if TRJPP lacks guidance.
Termination of Parental Rights (TPR) Proceedings	Yes – TRJPP apply	No	Yes – TRE apply	Standard of proof = clear and convincing evidence. TPR trials are adjudicatory in nature.
Appeals from Juvenile Court (to Circuit / COA)	Appellate Rules apply to COA	Civil Procedure apply in circuit	Yes, if evidentiary hearing is de novo (in circuit)	Appeal de novo to circuit.

Telling the Most Persuasive Story

- The story frame is set by the rules of procedure and evidence.
- The story conclusion is controlled by applicable law.
- Have a **theory** that addresses:
 - What happened
 - Why it happened
 - Why your client should legally prevail
 - Logical, simple and easy to believe
 - Addresses legal elements
- Have a **theme** you can come back to during the trial
 - “Safe return, not perfection”



Trial Preparation

Element

Fact	Document	Witness	Objection	Response



Witness Selection

- Who do you need to prove your theory?
- Evaluate each witness:
 - What facts can they introduce?
 - Is there another witness that can introduce the same facts?
 - Does this witness support my theme?
- Evaluate weaknesses: Can they be avoided or defused? How?
- Evaluate evidentiary issues and credibility problems.
- Utilize sequence witnesses for narrative impact.



Direct Examination

Direct examination is an opportunity to establish the facts that need to prevail.

- Use open-ended, structured, chronological questions.
- Avoid narratives - focus on sensory observations and rational opinions.
- Refresh recollection with documents (not hearsay if not admitted).
- Reinforce testimony with exhibits.
- Smoothly transition between topics.
- Protect and highlight your client's credibility.



Cross Examination

- Anticipate opposing witnesses in trial preparation and ask: How can this witness hurt this case?
- Is there a basis for excluding witness or specific testimony?
 - consider evidentiary objections
 - do the same for exhibits each witness might be offered through the adverse witness
- Identify contradictions or motives to challenge credibility.
- Prepare leading questions based on discovery: How can this witness help you?
- Use cross to reinforce your theme - not to argue with the witness.



Impeachment

- Prior inconsistent statements
- Bias or interest
- Contradiction by other evidence
- Use tone and timing - less is more



Witness Preparation Is Trauma Informed

- Explain courtroom roles and trial structure in plain language.
- Review the purpose of the parent's testimony and the theory of the case.
- Practice likely questions—both friendly and difficult ones.
- Explain the importance of answering only the questions asked on cross examination.
- Clarify legal language and help translate it into personal narrative.
- Remind witness to speak clearly, truthfully, and directly to the judge.
- Address possible triggers and prepare for emotional moments.
- Emphasize that “I don't know” and “I don't remember” are okay.
- Practice as needed, but don't “rehearse”.

<https://learn.texascasa.org/resource/garcia-rivera-case-journey-through-the-texas-child-welfare-system/>



Evidentiary Foundations

Evidence considered by the fact finder must be relevant and admissible.

- Rule 401: Relevance
- Rule 403: Unfair prejudice vs. probative value balancing test
- Rule 601: Competency
- Rule 702: Expert witness
- Rule 602: Personal knowledge
- Rule 802: Hearsay and its exceptions
- Rule 901: Authenticating evidence



Common Objections Review

- Relevance (Rule 401)
- Unfair prejudice (Rule 403)
- Speculation (Rule 602)
- Hearsay (Rule 802) and exceptions
- Foundation (Rule 901)
- Leading questions (on direct)

Practice Tip: Know when to object and when to let it go.



Common Objections for Dependency Hearings

Objection	Legal Basis/Rationale	When to Use	Example Scenario
Relevance	Rule 401 – must make a fact more or less probable	Information not related to an issue in the hearing	DCS asks about a parent’s traffic tickets during a removal hearing
Asked and Answered	Rule 403 – avoids cumulative evidence	Attorney repeats questions already answered	Parent’s attorney keeps asking if the parent completed parenting classes
Cumulative	Rule 403 – evidence is unnecessarily repetitive	Same point made by multiple witnesses or documents	Three different workers testify to the same observation
Assumes Facts Not in Evidence / Lack of Personal Knowledge	Rule 602 – witness must have personal knowledge	If a witness testifies to something they could not have directly perceived	A neighbor testifies: “Everyone knows the mom uses meth.”
Argumentative	Rule 611 – falls under the court’s authority to control interrogation	Cross-examiner engages in commentary or aggressive tone	GAL repeatedly asks: “So you just ignored your child’s needs?”
Leading Question	Rule 611(c) – not allowed on direct exam	Attorney suggests the answer in question to witness on direct	DCS asks the caseworker: “You found the home was unsafe, correct?”
Speculation / Lack of Personal Knowledge	Rule 602 / 701 – lay witnesses can’t guess or assume	Witness guesses about motives or future events	Caseworker speculates that the parent is likely to relapse without evidence
Improper Opinion	Rule 701 / 702 – experts vs. lay witness opinions	Lay person offers professional or medical opinion	Parent testifies that the child has PTSD without being qualified
Hearsay	Rule 802 – statement offered to prove truth of matter asserted	Out-of-court statements without applicable hearsay exception	DCS offers a foster parent’s written statement about something the child allegedly said
Lack of Foundation	Rule 901 – proponent has skipped a necessary step under the rules before the evidence can come in	Introduction of documents, etc. without testimony/certification to show they are what they claim	DCS offers CPS investigative report without testimony or certification

Hearsay Exceptions

- 803(1.2): Admission by a party opponent (parent statements)
- 803(4): Medical diagnosis/treatment
- 803(6): Business records – DCS notes, treatment logs. Beware of “hearsay within hearsay.”
- 803(8): Public records – agency reports of official duties.
- 803(25): Child statements of abuse/neglect
- What about the CASA Report? See *In re Azaylaya*, 2025 Tenn. App. LEXIS 248 (Tenn. Ct. App. July 11, 2025).



Propensity Evidence: 404(b)

No propensity evidence (prior bad acts to show conformity).

Requirements

- Bench ruling
- Court states non-propensity purpose.
- Clear & convincing proof the act occurred.
- Balance probative value vs. prejudice (State v. DuBose).

Juvenile Court Practice: Prior conduct often admitted as substantive proof of statutory grounds (not just character). In re Audrey S., 182 S.W.3d 838 (Tenn. Ct. App. 2005); In re H.A.L., No. 2005 WL 954866, (Tenn. Ct. App. Apr. 25, 2005) (Abandonment by wanton disregard). In re Alexis F. (Tenn. Ct. App. 2015) (404(b) issue on appeal)

Practice Tip: Object strategically



Expert Witness

- Expert must “substantially assist” trier of fact (stricter than federal rule).
- Reliability (Daubert/McDaniel v. CSX, 955 S.W.2d 257 (Tenn. 1997)): Peer review, general acceptance, testing, standards, pre-litigation development.
- Scope: Experts may testify about whether injuries are consistent with abuse.
- Cannot offer ultimate legal conclusions (“parent is unfit”).

Practice Tip: In bench trials, Daubert hearings are often skipped – raise pretrial motion if expert testimony is weak.





Presenting Your Case

Build Your Theory and Apply Objections with a Purpose

**Know Your Burden and the
Applicable Standard**



Admit or Not?

- **Scenario 1: Caseworker Testimony: "The child told me her mom left her alone overnight."**
 - Hearsay? Exception?
 - Relevance?
 - Personal knowledge?
- **Scenario 2: Medical Report: Discharge summary from ER visit introduced without witness.**
 - Self-authenticating?
 - Hearsay within hearsay?
 - Rule 803(6) business record?
- **Scenario 3: Screenshot of text messages, offered by parent to show communication with caregiver.**
 - Relevance?
 - Foundation for authenticity?
 - Hearsay? Exception?
 - Personal knowledge?
 - Best evidence rule?



Children's Testimony

Children have the right to be heard in court

- Our job is to make sure they can be heard safely and effectively.
- Trial courts must balance protection with access.
- TRJPP Rule 306 offers accommodations.
- Exclusion of testimony requires legal grounds.
- In re Kansas B. (Tennessee Court of Appeals, Middle Section, October 12, 2022)





Children's Testimony

Age of Child	When Statement is Admissible	Testimony Requirement	Extra Conditions
Under 13	Statement about abuse/neglect/sexual abuse	Child might not have to testify; See Rule 403's balancing test; Rule 601	Court must find circumstances show trustworthiness
13 or older	Statement about abuse/neglect/sexual abuse	Child must testify OR be unavailable under Rule 804	If unavailable, must also have corroborating evidence of the act
All Ages	Applies only in civil cases (e.g., D&N, TPR)	Advance notice required	Court must make findings on the record about admissibility



Children's Testimony

TRE Rule 601 – Competency

- All witnesses presumed competent
- Court must assess: perception, memory, communication, truth-telling capacity

TRE Rule 403 – Exclusion

- Testimony excluded only if probative value is substantially outweighed by unfair prejudice
- Emotional distress ≠ automatic prejudice

Case Law – *In re Kansas B.* (2022)

- Trial court erred excluding 7-year-old's testimony for emotional harm
- Must assess competency (Rule 601)
- Must use Rule 306 accommodations first
- Harm alone not enough under Rule 403

TRJJPP Rule 306 – Accommodations

- Support person, comfort item, child-friendly language
- Judge-led or written questions, protective seating/room setup

Purpose: reduce trauma without excluding testimony



Rule 601

Competency

- All witnesses presumed competent unless shown otherwise.
 - Applies to children
- Court must assess:
 - Ability to perceive and recall
 - Ability to tell the truth
 - Capacity to communicate



Checklist for Assessing Child Competency

- ✓ Can the child describe a recent event in their own words?
- ✓ Can the child distinguish between the truth and a lie?
- ✓ Does the child understand that they must tell the truth in court?
- ✓ Can the child respond to simple questions with coherent answers?
- ✓ Does the child show basic memory and understanding?



Responsibilities

Guardians ad Litem

- Assess child's desire and ability to testify
- Propose Rule 306 accommodations
- Prepare child sensitively

Parents Attorneys

- Challenge improper exclusions
- Ensure developmentally appropriate questioning
- Support client's understanding of the process



Trial Preparation and the Child Witness

Training Segment	Evidence Concept	Considerations
Case Theory & Theme	Rule 401, 403	Does the child's testimony support your theme? Is it more helpful than harmful?
Witness Prep	Rule 601	Is the child competent? How do you prepare developmentally appropriate direct and cross?
Objections & Strategy	Rules 403, 802, 803	Is the testimony subject to hearsay objection? Are you anticipating and preserving objections properly?
Ethical Advocacy	Professional Responsibility + TRJPP Rule 306	Are you advocating to include the child's voice while protecting them from harm?

Child Witness Preparation Is Trauma Informed

- Meet in advance in a calm, neutral setting.
- Explain courtroom roles and what to expect using child-friendly language.
- Use developmentally appropriate questions during prep.
- Practice responses without coaching or scripting.
- Explore Rule 306 accommodations with the child and court (e.g., support person, comfort items). Reassure the child that it's okay to say, "I don't know" or "I don't remember".
- Avoid repeated or emotionally loaded questioning.
- Collaborate with caregivers and mental health professionals when appropriate.



Preserving the Record

- Make timely, specific objections
- Ask for rulings and grounds
- Ensure key testimony is recorded
- Use offers of proof when needed



Pitfalls to Avoid

- Assuming evidence will “just come in”
- Over-preparing direct, under-preparing cross
- Ignoring foundation requirements
- Forgetting to re-evaluate trial strategy
- Mishandling child or expert witnesses



Orders Should Track the Transcript

- Appellate courts may reverse when findings don't track evidence. In re Colton B., No. M2017-00997-COA-R3-PT, (Tenn. Ct. App. Dec. 22, 2017)
- Abuse of Discretion Standard is the Standard on Appeal
- Consider drafting proposed findings of fact – shape the court's reasoning.
- Tenn. R. Evid. 103: Preserve issues by timely objection and offers of proof.
- Judicial notice ≠ evidence – bring records into the current hearing.

Practice Tip: Build the record you want the Court of Appeals to read – don't assume the judge "remembers."





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