



## UPDATE ON CASE LAW IN JUVENILE COURT PROCEEDINGS


**Hosted by:**

Tennessee Administrative Office of the Courts

**Presented by:**

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## BASIC CHALLENGES IN JUVENILE COURT PROCEEDINGS

- Appointment of Guardian ad Litem
  - Definition of Clear & Convincing Evidence
  - Waiver of Superior Parental Rights
  - Record in D/N vs. Record in TPR
  - Jurisdictional Issues
  - When should D/N be determined?
  - Is Lack of Reasonable Efforts a defense?
  - Analyzing **EVERY** best interest factor
  - Answers without signatures (NO!)
  - Ineffective Assistance of Counsel
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BASIC CASE LAW:

*IN RE ALIYAH C.*, 604 S.W.3D 417 (TENN. CT. APP. 2019)

Facts: TPR against mother. GAL fails to appear and Respondent Mother waives GAL's appearance. TPR granted.

- COA reverses termination finding that GAL's appearance is not waivable.
  - Parent's Attorneys: this is a good example wherein the COA addressed an issue which was waived at the trial level
  - GAL: This case defines the importance of the GAL and could be used during either opening or closing to emphasize the importance of the GAL advocating for the child



BASIC CASE LAW:

*IN RE AUDREY S.*, 182 S.W.3D 838 (TENN. CT. APP. 2005)

Facts: Mom receives two consecutive sentences of 15 and 12 years for aggravated kidnapping and aggravated robbery. Dads file TPR.

- **Defines Clear & Convincing Burden:** establishes that the truth of the facts asserted is ***highly probable***, and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence
  - Parent's Attorneys: Shows possible defense for all cases regarding burden of proof
  - GAL: Shows elements necessary to prove knowing elements for both D/N & TPR



BASIC CASE LAW:

*BLAIR V. BADENHOPE, 77 S.W.3D 137 (TENN. CT. APP. 2002)*

Facts: Mom died and dad gave custody to grandmother. Dad filed petition for material change claiming superior parental rights. Court found father no longer enjoyed presumption of superior parental rights

- Parents lose superior parental rights if they voluntarily give custody to someone else
  - **Parent's Attorneys: must advise parents of possible repercussions; try to negotiate timeline for Badenhope taking effect after Order is entered (one year?)**
  - **GAL: try to minimize timeline for Badenhope taking effect in order to provide permanency to child**

BASIC CASE LAW:

*IN RE M.J.B., 140 S.W.3D 643 (TENN. CT. APP. 2004)*

Facts: TPR filed against mother. The appellate record contained pleadings from both the D/N proceeding and the TPR proceeding.

- TPR proceeding is not a continuation of the D&N Proceeding. It is a new and separate proceeding involving different goals and remedies, different evidentiary standards, and different avenues for appeal
  - **Parent's Attorneys: Petitioner must create new record and cannot solely rely upon D&N record**
  - **GAL: Must make sure that record for TPR contains all necessary exhibits and pleadings and they are entered during the TPR trial**

**BASIC CASE LAW:**

*GREEN V. GREEN*, 2009 TENN. APP. LEXIS 69  
(TENN. CT. APP. FEB. 11, 2009)

Facts: Mom married convicted sex offender and dad filed petition for D/N in juvenile court. Juvenile court found D/N & mom appealed to Circuit for de novo trial. During the appeal, sex offender removed from mom's home. Circuit Court reverses finding of D/N based upon new circumstances. COA upholds.

- Very Controversial Case: Cited by 12 COA cases as of March 26, 2021 & never reversed including 2 reported cases
  - **Parent's Attorneys: D/N is based upon time of trial and not time of petition; change of circumstances**
  - **GAL: Argue past circumstances and choices present risk of harm (severe abuse cases?)**



**BASIC CASE LAW:**

*COX V. LUCAS*, 576 S.W.3D 356 (TENN. 2019)

Facts: Father filed petition for material change in Circuit Court where divorce was previously heard. Allegations amounted to D/N allegations. Mother filed Motion to Dismiss claiming juvenile court had exclusive jurisdiction. Trial court denied motion, but COA reversed. Supreme Court granted cert. and reversed based upon new T.C.A. 37-1-103.

- Circuit Court retains jurisdiction until D/N petition is filed in juvenile court and juvenile court exercises jurisdiction
  - **Parent's Attorneys: Due to the heightened burden, it might be better to try the case in juvenile court.**
  - **GAL: try to avoid juvenile court due to the heightened burden and remind petitioner of this fact**



BASIC CASE LAW:

*WHITE V. MOODY, 171 S.W.3D 187 (TENN. CT. APP. 2004)*

Facts: Dad abandoned child. Trial court found abandonment, but failed to analyze best interest. On the third appeal, COA went through best interest factors finding termination was in best interest.

- Best interest analysis does NOT consist of merely going through factors and adding them up. Relevance and weight of each factor depends on each set of facts.
  - **Parent's Attorneys: Try to go through each factor; if the trial judge does not enter an order analyzing each factor, it may be reversible error (overturned by new legislation if passed)**
  - **GAI: One factor can outweigh all the other factors depending on the circumstances of the case. Focus on the most important factors giving greater weight**



BASIC CASE LAW:

*IN RE KALIYAH S, 455 S.W.3D 533 (TENN. 2015)*

Facts: Baby was found by DCS to have suffered severe physical abuse. As a result, DCS filed a petition for D/N and TPR at the same time believing they did not have to provide reasonable efforts to reunify due to aggravated circumstances. Trial court granted TPR and COA reversed. Supreme Court reversed COA.

- Reasonable efforts are NOT a requirement of termination, but instead a factor which must be considered by the court in the best interest analysis.
  - **Parent's Attorneys: Supreme Court specifically stated DCS' efforts to assist the respondent parent may be determinative; still provides defense if little effort provided**
  - **GAI: must assure that DCS provides some efforts so that termination may go forward. do not allow parents a defense**



BASIC CASE LAW:

*IN RE GABRIELLA D*, 531 S.W.3D 662 (TENN. 2017)

Facts: Children in DCS custody due to severe abuse. Foster parents file TPR on day before 90 day THV begins. Trial court dismisses finding no best interest. COA reversed focusing on severe abuse and past. Supreme Court reverses through analysis of current best interest.

- Exceptional case for reviewing best interest factors at trial and appeal
  - **Parent's Attorneys: go through each factor and present witnesses to show each factor; trial court must analyze ALL factors**
  - **GAL: Do not rely solely upon extreme nature of severe abuse. Caselaw says "not all parental misconduct is irredeemable." *In re Audrey S***

*PUBLIC CHAPTER 190*

*David Grimmett mentions Senate Bill 205/House Bill 200 regarding an amendment to T.C.A. § 36-1-113(i) regarding best interests in a termination of parental rights proceeding. The bill passed as Public Chapter 190, and became effective on April 8, 2021. Public Chapter 190 can be found with the presentation materials.*

## LEGISLATIVE CHANGES TO BEST INTEREST FACTOR ANALYSIS UNDER 36-1-113 IN 2021

- Refer to handout
- Twenty (20) factors to consider
- Legislation clarifies that courts have the discretion to apply only the best interest factors that apply to the particular case
- Legislation reiterates that courts are not limited to consider only the factors listed by statute;
- Legislation reworks and expands factors so as to better assist courts in their best interest analysis
- **This will take effect as of becoming law (voted on 3/25/21)**
- Parent's Attorneys: always ask "why or why not" when looking at new factors
- GAL: create a record and present witnesses to support factors

### BASIC CASE LAW:

*IN RE CONNOR B.*, 603 S.W.3D 773 (TENN. CT. APP. 2020)

Facts: TPR trial in which appointed counsel filed an Answer that was not signed by respondent. Trial court entered default judgment against respondent due to failure to file Answer.

- COA finds that Answer must be signed by respondent pursuant to T.C.A. 36-1-117(o)
  - Parent's Attorneys: You must do everything possible in order to obtain the Respondent's signature on the Answer
  - GAL: If the Answer is not signed by the Respondent, move immediately for a default judgment. Note that you must still put on proof even with a default judgment.

BASIC CASE LAW:

*IN RE NATHAN C.*, 2020 TENN. APP. LEXIS 61  
(TENN. CT. APP. FEB. 12, 2020)

Facts: On remand from COA, trial court simply adopted petitioner's proposed findings without any changes. Matter appealed again to COA.

- COA reverses TPR finding that trial court's Order appeared dictated by counsel for petitioner and did not provide independent fact finder.
  - Parent's Attorneys: Be prepared to provide proposed findings of fact and conclusions of law on very complex case. May require obtaining copy of transcript.
  - GAL: Do not allow trial judge to enter Order which is simply a proposed order from petitioner. It must be independent and made from the judge's own words.



BASIC CASE LAW:

*IN RE CARRINGTON H.*, 483 S.W.3D 507  
(TENN. 2016)

Facts: Mom found to be mentally unable to care for child at TPR hearing. Appointed counsel appealed, but failed to argue ground and therefore waived them and TPR upheld. Mom filed *pro se* appeal to Supreme Court which granted cert regarding question of whether mom was entitled to effective assistance of counsel on appeal.

- Supreme Court in a split decision found appellate procedure is fair if COA reviews all grounds whether raised or not.
  - Parent's Attorneys: Carrington does not stand for the proposition that you can be incompetent. The COA will still review all grounds
  - GAL: Be aware that the COA will review all grounds whether they are raised or not and you must make a record to protect your client(s); the door may still be open for ineffective assistance of counsel





## BASIC CASE LAW:

*IN RE KAYLEIGH B.*, 2020 TENN. APP. LEXIS 126 (TENN. CT. APP. MARCH 27, 2020)

Facts: TPR proceeding in which father raised ineffective assistance of counsel as a grounds for reversal

- COA upholds TPR, but possibly opened the door for an argument that ineffective assistance of counsel may be grounds for reversal as it deprives the parent of a fundamentally fair procedure. Note: case was appealed to Supreme Court and deemed “not for citation”
  - Parent’s Attorneys: We will need to find a very good case to show completely ineffective assistance of counsel: e.g. parent’s attorney failed to participate at all. Carrington is the hurdle.
  - GAL: If you see a parent’s attorney completely failing to participate, you need to make a record and ask that the attorney be replaced immediately or suggest counsel participate.



## ADVANCED CHALLENGES IN JUVENILE COURT PROCEEDINGS

- How to sue a DCS worker
- Grandparents’ Rights
- What crime is NOT included in severe abuse
- Can a GAL be sued?
- New Ground for TPR – does “and” mean “or”
- “Missing Witness Rule” & “Unclean Hands”
- What date should be included in a TPR?
- Beating severe abuse with best interest alone!
- Can you withdraw from that client who never calls?

