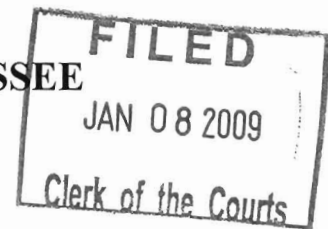


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



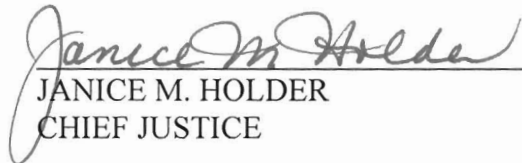
IN RE: AMENDMENTS TO TENNESSEE RULES
OF JUVENILE PROCEDURE

ORDER

The Court adopts the attached amendments effective July 1, 2009, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 32 DISPOSITIONAL HEARINGS; ORDERS
RULE 32A PERMANENCY PLANNING.

FOR THE COURT:



JANICE M. HOLDER
CHIEF JUSTICE

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 32

DISPOSITIONAL HEARINGS; ORDERS

[amend Rule 32(f) to read as follows:]

(f) EVIDENCE ADMISSIBLE; STANDARD OF PROOF. In arriving at its dispositional decision, the court shall consider only evidence which has been formally admitted, and the juvenile court record of the child. All testimony shall be under oath and may be in narrative form. The rules of evidence shall apply except that reliable hearsay including, but not limited to, certified copies of convictions or documents such as psychiatric or psychological evaluations of the child or the child's parents or custodian or reports prepared by the Department of Children's Services, may be admitted provided that the opposing party is accorded a fair opportunity to rebut any hearsay evidence so admitted. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the state of Tennessee. The parties shall have the right to examine any person who has prepared any report admitted into evidence. The standard of proof at the dispositional hearing is preponderance of the evidence.

2009 Advisory Commission Comment

The final sentence of revised Rule 32(f) provides for a preponderance of evidence standard of proof at dispositional hearings.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 32A

PERMANENCY PLANNING

[add the following new Rule 32A:]

Rule 32A. Permanency Planning. —

(a) **GENERALLY.** The permanency planning process requires the juvenile court to review and approve the **development**, implementation and modification of the permanency plan for each child in foster care. The court shall ensure the permanency plan remains in the best interest of the child throughout the permanency planning process. The court shall monitor compliance with the terms of the permanency plan by the parties and issue such orders as may be appropriate to enforce compliance. The court should modify the plan accordingly to ensure timely permanency for the child. The permanency planning process includes, but is not limited to, the ratification hearing, judicial review, foster care review board hearing and permanency hearing.

(b) **REPRESENTATION.** In dependent, neglect and abuse cases, the child shall be represented by a guardian ad litem at all stages of the permanency planning process until such time as the child is no longer in foster care. In the event the child returns to foster care, all efforts shall be made to appoint the same guardian ad litem to represent the child. In addition, the parent has a right to representation at all stages of the permanency planning process. If a parent is not represented by an attorney, the court shall advise the parent in open court of the right to an attorney and, if indigent, of the right to a court-appointed attorney. The court shall not proceed with the hearing unless the parent has waived the right to an attorney in accordance with Rule 30.

(c) ATTENDANCE; NOTICE; DILIGENT SEARCH FOR ABSENT PARENTS. At the beginning of each hearing, the court shall ascertain whether all necessary persons are before the court, including the child, parents (including putative fathers), representative of the foster care agency, CASA (Court Appointed Special Advocate), and foster parents, preadoptive parents or relatives providing care of the child. If a necessary person is not present, the court shall determine whether notice of the hearing was provided. If a parent's identity or whereabouts are unknown, the court shall ascertain whether the agency has made reasonable efforts to identify and/or determine the whereabouts of the absent parent.

(d) EVIDENCE; STANDARD OF PROOF. The court shall consider only evidence which has been formally admitted, and the juvenile court record of the child. All testimony shall be under oath and may be in narrative form. The rules of evidence shall apply except that reliable hearsay including, but not limited to, documents such as psychiatric or psychological evaluations of the child or the child's parents or custodian or reports prepared by the Department of Children's Services, may be admitted provided that the opposing party is accorded a fair opportunity to rebut any hearsay evidence so admitted. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Tennessee. The parties shall have the right to examine any person who has prepared any report admitted into evidence. The standard of proof at the ratification hearing, judicial review and permanency hearing is preponderance of the evidence. This subsection does not apply to foster care review board hearings.

(e) ORDER. At the conclusion of each ratification hearing, judicial review, and permanency hearing the court shall enter an order in writing and signed by the judge. The order shall include the name of the persons attending the hearing and their relationship to the child; if a parent is not

represented by counsel, that the parent has waived his or her right pursuant to Rule 30; and, if a necessary person is not present, whether notice of the hearing was provided. If a parent's identity or whereabouts are unknown, the order shall include findings of the reasonable efforts made by the agency to identify the parent or to ascertain the whereabouts of the absent parent. The order shall include findings of fact that the permanency plan is in the best interest of the child and that the agency has or has not exercised reasonable efforts pursuant to T.C.A. § 37-1-166. In addition, the order shall include all other findings required by federal and state law.

(f) RATIFICATION HEARING. (1) The court shall review the permanency plan for each child in foster care pursuant to T.C.A. § 37-2-403. The court shall take such action as may be necessary to ensure the plan is in the child's best interest. The initial permanency plan must be ratified within sixty (60) days of a child's foster care placement. Permanency plans are subject to modification and shall be reevaluated and updated at least annually.

(2) The court shall explain on the record that the purpose of the ratification hearing is to review and approve the permanency plan. The court shall advise the parties that the consequences of failure to comply with the plan, visit or support the child will be termination of the parents' or guardians' parental rights, and that the parents or guardians may be represented by an attorney in any termination proceeding.

(3) If the permanency plan has been agreed upon by the parties, the court shall review and only ratify the plan if the court finds it to be in the best interest of the child. If the court finds the plan is not in the best interest of the child, the court shall hold an evidentiary hearing to develop and ratify a plan that is in the best interest of the child.

(4) If the parties are unable to agree on the permanency plan, the court shall hold an evidentiary hearing to develop and ratify a plan that is in the best interest of the child.

(5) In cases where the court ratifies the plan without modifications and the parent or guardian is not present at the ratification hearing and did not participate in the development of the permanency plan, the court shall determine the efforts made by the agency to notify the parent or guardian of the requirements of the plan. The court shall include findings of these efforts in the order. In cases where the parent or guardian is not present for the hearing and the court modifies any provisions of the plan, the judge shall instruct the agency in the order to timely notify the parent or guardian of the plan's provisions.

(g) JUDICIAL REVIEW; FOSTER CARE REVIEW BOARD HEARINGS. (1) The court shall review the permanency plan, or delegate the review to the foster care review board, within ninety (90) days of the child's date of foster care and no less often than every six (6) months thereafter until such time as the child is no longer in foster care. Reviews may be scheduled as often as determined necessary. The agency shall submit a report on the progress of the permanency plan to the court or foster care review board. In addition, the progress report shall be provided to the parents whose rights have not been terminated or surrendered, the parent's attorney, guardian ad litem and/or attorney for the child and the child who is a party to the proceeding. The hearings shall be held in accordance with T.C.A. §§ 37-2-404 and 406.

(2) When the review of the permanency plan is conducted by the foster care review board, the board shall prepare and submit an advisory report of its findings and recommendations in accordance with T.C.A. § 37-2-406(c)(1)(A). The court shall establish a procedure to receive the report from the foster care review board. At the next hearing by the court, the court shall review the board's advisory report. The court shall determine whether the recommendations are in the best interest of the child and, if in the child's best interest, incorporate the recommendations into the child's permanency plan.

(3) The court shall also establish a procedure to receive, docket and conduct a hearing on a direct referral of the foster care review board within the time limits provided by T.C.A. § 37-2-406(c)(1)(B). The court shall ensure that the board is provided a copy of the order.

(h) PERMANENCY PLANNING. (1) The court shall conduct a permanency hearing within twelve (12) months of the child's date of foster care placement; or within thirty (30) days of a determination that reasonable efforts to reunify the family are not required pursuant to T.C.A. § 37-1-166(g)(4). The hearing shall be conducted pursuant to T.C.A. § 37-2-409.

(2) At this hearing the court shall make findings of fact whether reasonable efforts have been made to reunify the family or to finalize another permanent goal. These findings shall be included in the order.

(3) The court must determine the appropriate goal for the child to achieve permanency. Continuation of the goal of reunification should be allowed only in circumstances where the parent or guardian has substantially complied with the permanency plan. However, in determining whether the parent or guardian is in substantial compliance, the court must determine that the agency has provided reasonable efforts for the parent or guardian to comply with the responsibilities on the permanency plan. Additionally, the court shall determine whether the services for the child provided for in the plan are in the best interest of the child and if other services are required.

2009 Advisory Commission Comment

The purpose of this Rule 32A is to provide procedures for each hearing in the permanency planning process that occurs for children in foster care, specifically the ratification hearing, judicial review, foster care review board hearing, and permanency hearing. These procedures provide for safeguarding the rights of the parties, applicable evidentiary standards, and judicial oversight of the permanency process. The permanency planning process provides an opportunity to ensure timely

permanency for children via continuing judicial oversight of the process. Permanency may be achieved through either of the five permanency goals: return to parent, exit custody with a fit and willing relative, adoption, permanent guardianship, or planned permanent living arrangement. The role of the juvenile court judge as the gatekeeper of the foster care system requires judicial monitoring of every child's permanency plan. The result of proper judicial oversight is a beneficial permanency plan that comprehensively addresses the needs of the child and family while charting a timely course for the child to reach a permanent, safe, and healthy home.

Subsection (b) clarifies that the child must be represented by a guardian ad litem, and the parent has a right to representation by an attorney throughout the permanency planning process. The appointment of the guardian ad litem for the child should occur prior to the first hearing in the proceeding, including the preliminary hearing. A child may not waive his or her right to a guardian ad litem. In addition, the parent has the right to be represented by an attorney when the case is initiated. If the parent has previously waived his or her right to counsel pursuant to Rule 30, the court shall advise the parent at each of these hearings of the right to an attorney and, if indigent, of the right to a court-appointed attorney. If the parent continues to waive the right to representation, the court must continue to comply with Rule 30.