

TENNESSEE JUDICIAL CONFERENCE MARCH, 2014

WHAT ARE YOU SIGNING?

--Some Areas of Concern--

Chancellor Telford Forgety

I. Divorce/Paternity

(A.) Orders That Find a Child to be Not a Child of the Marriage

- (1.) Note that such Orders would leave the child without a father for support purposes, unless another man has been established as father.
- (2.) Tenn. Code Ann. 36-2-304 provides a rebuttable presumption of paternity for a child born during the marriage or within 300 days after the marriage is terminated.
- (3.) Per T.C.A. 36-2-304(b)(4) an Agreed Order of Non-Paternity is not preclusive unless based upon scientific tests. See, T.C.A. 24-7-112(b)(2)(B), (C) “Tests to determine parentage...” There is a rebuttable presumption of paternity for tests with 95% or greater probability; very limited right to rebut when probability is 99% or greater.
- (3.5) See *In Re T.K.Y.*, 205 SW 3d 343, 350-52 (Tenn. 2006) holding that ordinarily paternity probability of 99% will entitle the putative father to superior rights.

(B.) Orders Which Deviate Child Support From The Guidelines

- (1.) T.C.A. 36-5-101(e)(1)(A) provides that the Court must make written findings that application of the guidelines would be unjust or inappropriate, and must state the amount of support that otherwise would have been ordered.
- (2.) T.C.A. 36-5-101(e)(1)(C) provides for deviations from retroactive support in certain situations where an abandoning spouse has removed/hidden the children. But per 36-5-101(e)(1)(D) the standard is clear and convincing, and again the Court must make written findings that guidelines would be unjust or inappropriate.
- (3.) Does the proposed Order deviate from child support guidelines—i.e., does it purport to eliminate child support partially or in whole?
- (4.) Is the Order sufficient?

II. Adoption, Unknown Party

(A.) Orders for Service by Publication

(1.) T.C.A. 36-1-117(n)(3):

“Any motion for an order for publication in these proceedings shall be accompanied by an affidavit...attesting in detail to all efforts to determine the identity and whereabouts of the (unknown) parties.”

(2.) Note: A mere recitation that the father is unknown is insufficient.

(B.) Orders for Termination of Parental Rights

(1.) T.C.A. 36-1-113(k) requires written findings of fact and conclusions of law within 30 days of the termination hearing.

(2.) It is not sufficient to make oral findings from the bench and direct that they be incorporated in the order. *White v. Moody*, 171 SW 3d 187, 192 (Tenn. App. 2004) perm. app. den. (2005); *State of Tenn., Dept. Ch. Serv. v C.H.K.*, 154 SW 3d 586, 590-91 (Tenn. App. 2004) perm. app. den.

(3.) While a termination requires only one ground, the Order should nevertheless include findings and conclusions as to each ground presented. *In Re D.L.B.*, 118 SW 3d 360, 367 (Tenn. 2003).

(4.) Is the Order sufficient?

III. Potpourri

Ex Parte Restraining Order:

(A.) Tenn. R. Civ. Proc. 65.03 requires a showing of immediate and irreparable injury; and efforts to give notice and the reasons why it should not be required. But see R. 65.07 as to Domestic Relations cases.

(B.) Ex Parte Orders of Protection: the form order automatically prohibits abuse; placing the Petitioner in fear; or stalking. See attached. Do we intend to grant custody, etc.? --i.e., has the Petitioner checked the optional boxes?

(C.) Orders Allowing Withdrawal of Attorneys:

Has there been noticed to the Client, and an opportunity for hearing? See Tenn. R. Sup. Ct. 8, RPC 1.16(d), comment 8.

- (D.) Orders Waiving Bond in Conservatorship/Guardianship Cases:
- Do we really mean to waive bond?
 - Does the Petition show one of the exceptions to bond?
e.g., Fiduciary is financial institution; Ward's non-real property \$10,000 or less; Property placed with financial institution or Clerk of the Court; Guardian is only of the person, etc.
 - Is the Petition Sufficient?